

## Regional National Autonomy under Challenge: Law, Practice and Recommendations

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### Abstract

Regional national autonomy is claimed to be the “basic policy” of the Chinese Communist Party and a “basic political system” of the State to solve the minority nationalities’ issues in China. Within the framework of “basic law”, the Regional National Autonomy Law, the rights of the minority nationalities to administer their internal affairs shall be guaranteed. The present severe challenges to this system can be observed through its malfunctions in ethnic conflict solution, the maintenance of cultural diversity and the due regards of the interests of minorities in the quick economic development. By developing its research methodology based on reviewing previous studies in this field, this article tries to describe this system in law and in practice through four essential elements, which include territory, group, organs of self-government and autonomous power of regional national autonomy. Taking into account the problems of implementation of law and the institutional design of regional national autonomy, this article briefly explores options to provide a meaningful autonomy for minority nationalities in China.

### Keywords

Regional National Autonomy (RNA); Beijing–Oslo Recommendations on the Protection of the Rights of Linguistic Minorities; minority rights; autonomy; group rights; autonomous organs; self-government; autonomous powers

Regional National Autonomy (RNA) is a fundamental building block in the ethnic policy and law of the People’s Republic of China (PRC or China). According to its present legal enactment, it is both the “basic policy” of the Chinese Communist Party (CCP) to solve the national question in China and a “basic political system” of the State, embodying “the State’s full respect for and guarantee of the rights of the minority nationalities to administer their internal affairs”.<sup>1</sup>

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<sup>1</sup>) Preface of the Law of People’s Republic of China on Regional National Autonomy (RNAL). It was adopted in 1984 and amended in 2001: the original expression in 1984 is that regional national

In the Chinese social context, RNA may be looked upon as a concept, a social movement or a political and legal institution.

- As a concept, the current RNA can be traced back to the idea of self-determination adopted by the CCP in the 1920s.<sup>2</sup>
- As a social movement, it is related to the two intertwined political movements of ethnic nationalism and regionalism or localism.
- As a political and legal institution, it was adopted as an important political system in all Chinese constitutions initiated by the CCP since 1949.<sup>3</sup> In 1984, Regional National Autonomy Law (RNAL) was enacted by the National People's Congress for the implementation of the RNA system prescribed in the 1982 Constitution. The establishment of the Inner Mongolian autonomous government in 1947 may be taken as the first example of this development.<sup>4</sup>

This research is dedicated to the study of RNA as a political and legal institution. We aim to describe and explain various institutional aspects relating to its design and practice to guarantee the rights and interests of China's minority nationalities. Our study observes RNA in the Chinese social context with its stated purpose, normative framework, institutions and practice. In addition, based on the research findings on RNA and our understanding of international human rights law, the drafting of policy and law recommendations were organised under the Sino-Norwegian research cooperation China Autonomy Programme.

The articles in this volume on the Chinese RNA are parts of our research results. The data presented have mainly been collected from 2004 to 2008 during field visits in RNA areas. The introduction of this research on RNA consists of four parts:

1. Existing studies on RNA and our perspectives
2. Challenges to the role and functions of RNA
3. RNA: four essential elements and its Chinese characteristics
4. Exploring “meaningful autonomy” for the protection of minority rights

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autonomy is “an important political system of the State”. It is revised to “a basic political system of the State” in 2001. Since then, RNA together with the people's congress system and the Chinese People's Political Consultative Conference system are the three basic political systems in China.

<sup>2)</sup> The Second National Congress of the CCP proposed establishing the federalist State, to recognise the right of ethnic minorities to national self-determination, and to establish national autonomous areas, to deal with the ethnic issues in China.

<sup>3)</sup> The Common Program of the Chinese People's Political Consultative Conference was adopted on 29 September 1949, which corresponded to the temporary Constitution at the time. The first Constitution of the PRC was adopted in 1954. Although the Chinese constitution was revised substantially after 1954, the stipulation of RNA remained in the constitutions of 1975, 1978 and 1982.

<sup>4)</sup> In his inspection in Inner Mongolia with local officials, Simayi Aimaiti, Vice Chairman of the Standing Committee of the National Congress, remarked that “the founding of the Autonomous

RNA, as the centrepiece in Chinese ethnic policy and law, has been one main concern for scholars interested in minority issues in China. It has been the subject of different analyses from Chinese and foreign scholars, from domestic and foreign State organs, from international governmental bodies and non-governmental organisations (NGOs) providing multiple approaches and descriptions. The scholarly studies may roughly be divided into three different kinds: analysis from a “top-down” vs. “bottom-up” approach; analysis of the law “on paper” vs. the law “in practice”; and analysis of general political principles v. legal mechanisms of rights and remedies. The research presented in this special issue approaches the study of RNA in essentially three ways: from “bottom-up” having the perspective of the rights and interests of the minority group in sight; from “law-in-practice” reflecting on RNA from the basis of field research; and inquiring into the legal mechanisms to secure the legal rights of minority nationalities. Furthermore, the research addresses the issues in the context of fundamental aspects of the identity of minority nationalities, *i.e.* language, culture or ways of life and religion.

At present, the Chinese RNA has to meet severe challenges. To name a few, the tensions in ethnic relations require RNA to provide some kinds of solutions of the existing conflicts. The maintenance of cultural diversity demands effective measures based on the RNA framework, and the due regards of the interests of minorities in the quick economic development call for functional mechanism of RNA as a meaningful instrument. In this paper we describe challenges relating to the above three fields for reflection on whether the institutional arrangement of RNA in its current form can respond to these challenges.

RNA is a particular construct of Chinese policy and law which straddles two notions: that of being territorial or regional autonomy, *difan zizhi*, and that of being ethnic autonomy, *minzu zizhi*.<sup>5</sup> In fact, the stipulated aim of the RNA emphasises the ethnic in stating that minority nationalities shall act as masters in their own areas in exercising the right to administer their internal affairs.<sup>6</sup> However, the institutional design and the implementation of RNA have exposed tensions between the regional and the ethnic aspects.

We approach the RNA from the ethnic aspect, in examining how RNA may secure the rights of minority groups and their members as masters of their own

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Region of Inner Mongolia marked turning of China’s regional national autonomy system from scientific theory to great social practice”. See <[www.nmg.gov.cn](http://www.nmg.gov.cn)>.

<sup>5</sup> Zhou Enlai, *Guanyu woguo minzu zhengce de jige wenti* [Some Questions Concerning Nationalities Policy in Our Country] – Speech at the Qingdao Nationalities’ Work Symposium of August 4, 1957), *Hong qi*, 1 January 1980, pp. 4–14. Due to historical or other reasons, territorial or regional autonomy has been established in China for other subjects than the national minorities, such as the Special Administrative Regions of Hong Kong and Macao.

<sup>6</sup> Preface of the RNAL (1984) as amended in 2001. Government White Paper: *National Minorities Policy and Its Practice in China*, Information Office of the State Council of the PRC, Beijing, June 2000, Ch. III. Regional Autonomy for Ethnic Minorities, para. 1, <[www.china.org.cn/e-white/4/4.3.htm](http://www.china.org.cn/e-white/4/4.3.htm)>, last visited 17 March 2009.

affairs, while taking into account that China is moving towards governance based on the principle of rule of law.<sup>7</sup> The starting point is the Chinese understanding of RNA, which according to the RNAL

means that the *minority nationalities*, under unified State leadership, practise regional autonomy in *areas* where they live in *concentrated communities* and set up *organs* of self-government for the exercise of *the power* of autonomy.<sup>8</sup> (emphasis added)

This law highlights four core institutional elements of the RNA, including (a) territory; (b) group; (c) organs of autonomy or self-government; and (d) autonomous powers.<sup>9</sup> The law and practice relating to these four elements are reviewed in the third part of this paper. Reflections on the characteristics of RNA are further disclosed within the Chinese political power structure and institutional environment.

Taking into account the implementation problems of RNAL, this paper briefly explores some options to provide a meaningful autonomy for minority nationalities in China. This exploration has led us under the China Autonomy Programme, to organise and present the Beijing-Oslo Recommendations on the Protection of the Rights of Linguistic Minorities as a project in progress.

## 1. Existing Studies on RNA and Our Perspectives

RNA has been the subject of different analyses from Chinese and foreign scholars, from domestic and foreign State organs, from international governmental bodies and NGOs providing multiple approaches and descriptions. These studies may roughly be divided into three contrasting approaches: analysis from a top-down vs. a bottom-up approach; analysis of the law on paper vs. the law in practice; and analysis of the general political principles of RNA vs. specific legal mechanism of rights and remedies.

The RNA has been one of the main concerns among scholars who are interested in minority issues in China. All the Chinese constitutions since the end of the 1940s articulate that RNA is the basic institutional arrangement for solving

<sup>7</sup> Cf. the analysis focusing on governance in P.B. Potter, 'Governance of China's Periphery: Balancing Local Autonomy and National Unity', 19 *Columbia Journal of Asian Law* (2005/2006) pp. 293–322. On the principle of rule of law in China, see R. Peerenboom, *China's Long March Toward Rule of Law* (Cambridge University Press, Cambridge, 2002).

<sup>8</sup> Preface of the RNAL.

<sup>9</sup> Ao Junde concludes that RNA consists of five factors: nationality exercising regional autonomy, national autonomous area, organs of self-government, autonomous power, and regulations on exercise of autonomy. See Ao Junde, 'Guanyu Minzu Quyu Zizhifa de Liangge Jilben Wenti' [Two Basic Questions about the Law on Regional National Autonomy], No. 6 *Guizhou Ethno-National Studies* (2004).

the national question. It has had its relevance for political, economic, social and cultural affairs of the minority nationalities in China. Previous researches from various disciplines on the relevant topics have increased our understandings of RNA. These studies include minority policy in general<sup>10</sup> or in specific fields, such as autonomy,<sup>11</sup> minority cadres,<sup>12</sup> minority education,<sup>13</sup> language policy,<sup>14</sup> Han settlers in RNA areas,<sup>15</sup> natural resources exploitation,<sup>16</sup> cultural survival,<sup>17</sup> urbanisation,<sup>18</sup> economic or social aid,<sup>19</sup> and preferential treatment or affirmative action.<sup>20</sup> The observations of the interactions between minority nationalities and the State, such as ethnic subjectivity and ethnography of the State,<sup>21</sup> minority nationalism,<sup>22</sup> social reform,<sup>23</sup> discourse of race<sup>24</sup> and identifying minority

<sup>10</sup> T. Heberer, *China and Its National Minorities: Autonomy or Assimilation?* (M. E. Sharpe, Inc., Armonk, New York, 1989) and C. Mackerras, *China's Minorities: Integration and Modernization in the Twentieth Century* (Oxford University Press, Oxford, 1994).

<sup>11</sup> Y. Ghai (ed.), *Autonomy and Ethnicity: Negotiating Competing Claims in Multiethnic Societies* (Cambridge Studies in Law and Society, Cambridge University Press, Cambridge, 2000).

<sup>12</sup> S. Harrell, 'Etat, C'est Nous: The Predicament of Minority Cadres in the PRC', in D. Lary (ed.), *The Chinese State at the Borders: Essays in Honor of Alexander Woodside* (University of British Columbia Press, Vancouver).

<sup>13</sup> M. H. Hansen, *Lessons in Being Chinese: State Education and Ethnic Identity in Southwest China* (University of Washington Press, Seattle, 1999).

<sup>14</sup> Zhou Minglang, 'The Politics of Bilingual Education and Educational Levels in Ethnic Minority Communities in China', 4 *International Journal of Bilingual Education and Bilingualism* (2001); Minglang Zhou (ed.), *Language Policy in the People's Republic of China: Theory and Practice since 1949* (Kluwer Academic Publishers, 2004); Minglang Zhou, *Multilingualism in China: The Politics of Writing Reforms for Minority Languages, 1949–2002* (Walter De Gruyter, Inc., Berlin, 2003); Zhou Yong, 'Constitutional Amendments and New Challenges to Legal Protection of Linguistic Minorities in China', in M. Lundberg et al (eds.), *Review of Policy and Law on Linguistic Minorities in China* (The Ethnic Publishing House, Beijing, 2008).

<sup>15</sup> M.H. Hansen, *Frontier People: Han Settlers in Minority Areas of China* (C. Hurst & Co., 2005).

<sup>16</sup> J.P. Dorian, B. Wigdortz and D. Gladney, 'Central Asia and Xinjiang, China: Emerging Energy, Economic, and Ethnic Relations', 16:4 *Central Asian Survey* (1997) pp. 461–486.

<sup>17</sup> D. Gladney, *Muslim Chinese: Ethnic Nationalism in the People's Republic* (Harvard University Press, Cambridge, MA, 1991); D. Gladney, 'Xinjiang: History, Cultural Survival, the Future of the Uyghur', in A. Heijmans, N. Simmonds and H. van de Veen (eds.), *Searching for Peace in the Asia Pacific: An Overview of Conflict Prevention and Peace Building Activities* (Lynne Rienner Publishers, 2004) pp. 255–277; D. Gladney, *China's Minorities: The Case of Xinjiang and the Uyghur People*, E/CN.4/Sub.2/AC.5/2003/WP.16, 2003.

<sup>18</sup> Yang Yunpeng and Du Jianrong, 'Urbanization and the Alteration of Administrative Division in Lijiang Naxi Autonomous County', in Zhou Yong and M. Lundberg (eds.) *Minorities, Autonomy and Development: Studies on Regional National Autonomy in China* (Law Press, Beijing, 2008).

<sup>19</sup> Jin Wei, 'Report on the Effects of Projects of Aiding Tibet', 3 *China Tibetology* (2000).

<sup>20</sup> B. Sautman, 'Preferential Policies for Ethnic Minorities in China: The Case of Xinjiang', 4 *Nationalism & Ethnic Politics* (1998) pp. 86–118.

<sup>21</sup> L. Schein, *Minority Rules: The Miao and the Feminine in China's Cultural Politics* (Duke University Press, 2000),

<sup>22</sup> U.E. Bulag, *Nationalism and Hybridity in Mongolia* (Clarendon Press, Oxford, 1998).

<sup>23</sup> S. Harrell, 'Introduction: Civilizing Projects and the Reaction to Them', in S. Harrell (ed.), *Cultural Encounters on China's Ethnic Frontiers* (University of Washington Press, Seattle, WA, 1995).

<sup>24</sup> F. Dikötter, *The Discourse of Race in Modern China* (Stanford University Press, 1992).

nationalities in China,<sup>25</sup> are all essential for understanding RNA. In view of the practice of RNA for more than half a century, in areas covering more than 64 per cent of the territory of PRC, the studies on the historical and regional practice in relation to the ethnic politics, ethnic relations and development issues are also of great significance. A few important studies can be named on the RNA history<sup>26</sup> and minority nationalities in specific areas, such as Guangxi,<sup>27</sup> Xinjiang,<sup>28</sup> Tibet<sup>29</sup> and Inner Mongolia.<sup>30</sup>

Making a descriptive-analytical study on the RNA in the Chinese social context is the first step to understand RNA. There are three-couples of contesting perspectives in the previous publications on RNA that need to be summarised to present the approach of the researches in this special issue.

### 1.1. *Top-down vs. Bottom-up Perspectives*

The “top-down” perspective on RNA argues that the establishment of this system is for the best interest of the State. It claims that RNA has functioned to maintain the unity of China and fit the special Chinese situations. This is the mainstream discourse presented by more than 10 textbooks on the RNAL.<sup>31</sup> The text books’ perspective serves for educating and informing about the RNAL, while neglecting the responses towards the RNA by minority peoples or communities.

In contrast to this dominant perspective, empirical investigations on specific cases in relation to minorities’ interests have contributed to the debates on the

<sup>25</sup> Huang and Shi, *Identifying Minority Nationalities in China* (Ethnic Publishing House, Beijing, 2005).

<sup>26</sup> Zhang Erju, *Outline History of Regional National Autonomy in China* (Ethnic Publishing House, Beijing, 1995); U. E. Bulag, *The Mongols at China’s Edge: History and the Politics of National Unity* (Rowman & Littlefield Publishers, Inc., Lanham, MD, 2002).

<sup>27</sup> K.P. Kaup, *Creating the Zhuang: Ethnic Politics in China* (Lynne Rienner Press, Boulder, CO, 2000).

<sup>28</sup> G. Moseley, *A Sino-Soviet Cultural Frontier: The Ili Kazakh Autonomous Chou* (East Asian Research Center, Harvard University, Harvard University Press, Cambridge, MA, 1966); G. Bovingdon, *Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent* (East-West Center Washington, Washington, DC, 2004); D. Bachman, ‘Making Xinjiang Safe for the Han? Contradictions and Ironies of Chinese Governance in China’s Northwest’, in M. Rossabi (ed.), *Governing China’s Multiethnic Frontiers* (University of Washington Press, Seattle, WA, 2004); S.F. Starr (ed.), *Xinjiang: China’s Muslim Borderland* (M.E. Sharpe, Armonk, NY, 2004).

<sup>29</sup> M.C. Goldstein, B. Jiao, C.M. Beall and P. Tsering, ‘Development and Change in Rural Tibet: Problems and Adaptation’, in J. Dreyer and B. Sautman (eds.), *Contemporary Tibet: Politics, Development and Society in a Disputed Region* (M.E. Sharpe Publishers, 2005); L. Sangay, ‘China’s National Autonomy Law and Tibet: A Paradox Between Autonomy and Unity’, *Harvard South Asian Journal* (October 2006), <[www.phayul.com/news/tools/print.aspx?id=14112&t=1](http://www.phayul.com/news/tools/print.aspx?id=14112&t=1)>.

<sup>30</sup> Bulag, *supra* note 26; U.E. Bulag, ‘Inner Mongolia: The Dialectics of Colonization and Ethnicity Building’, in Rossabi, *supra* note 28.

<sup>31</sup> A few samples of these textbooks includes Yang Houdi (ed.), *Regional National Autonomy Law: A Text Book* (Law Press, Beijing, 1995); Song Chaifa, *General Survey on the Regional National Autonomy Law* (Ethnic Publishing House, Beijing, 2003); Wu Zongjing, *China’s Regional National Autonomy Law* (Law Press, Beijing, 2004).

issues of RNA.<sup>32</sup> Studies from the perspective of peoples' interests and rights, "bottom-up", to describe RNA join the discourse representing an added value. The 1st International Symposium on RNA in Beijing in 2000 provided a comparative and global perspective on RNA. Research from a "bottom-up perspective" of group rights instead of a "top-down perspective" on State interests and powers of RNA were discussed.<sup>33</sup> Further empirical case studies on RNA along this line have followed.<sup>34</sup>

The studies presented in this special issue set the rights and interests of the minority nationalities at the forefront of the study, thus taking a "bottom-up" perspective. Göran Leijonhufvud's research addresses the possibilities for minority nationality, or ethnic, townships, which are according to law and regulation complementary to RNA, to open for the effective participation of minority nationalities. Zhou Yong analyses if the RNA system can provide an effective guarantee for the legal rights of minority nationalities as set out in the RNAL and Maria Lundberg inquires whether the RNAL can provide a guarantee for the linguistic rights of minorities in accordance with international human rights standards. Koen Wellens argues that local officials and intellectuals have by exploiting public discourse on religious freedom and cultural rights expanded the enjoyment of these rights. Zhang Xisheng concludes, however, that there are strong indications that despite their aim they do not promote the participation of the relevant minority nationality in local matters.

### 1.2. *Law on Paper vs. Law in Practice*

There are numerous publications explaining analysing how the RNAL stands "on paper". Among them, more than six books illuminate the meaning of each articles of RNAL based on the text.<sup>35</sup> It is necessary that this basic law is the object for legal studies to explain the articulated rules of the RNAL, mainly for legal scholars and practitioners dealing with relevant disputes. However, there are extremely limited sources available for interpreting the text of the RNAL, mainly because this law is judicially inapplicable. There are no specific administrative or judicial remedies for disputes based on the RNAL, which makes legal studies of the RNAL, in comparison with other basic laws in China, such as the criminal law, more difficult to achieve and makes them have a limited impact.

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<sup>32</sup> Cao Changching and J. D. Seymour (eds.), *Tibet through Dissident Chinese Eyes: Essays on Self-determination* (M.E. Sharpe, Armonk, NY, 1998).

<sup>33</sup> Zhou Yong, 'Exploring the Way of Combining "Regional Autonomy" and "National Autonomy"', in Wang and Sautman (eds.), *The Regional Autonomy of Ethnic Minorities in International Vision* (The Ethnic Publishing House, 2002).

<sup>34</sup> See Zhou Yong and Lundberg, *supra* note 18. It represents this trend of research.

<sup>35</sup> Ao Junde, *Explanations of the Law of People's Republic of China on Regional National Autonomy* [Zhonghua Renmin Gongheguo Minzu Quyu Zizhifa Shiyi] (Minzu Publishing House, Beijing, 2001).

The wording of the rules articulated in the RNAL is general and vague, and the absence of administrative and judicial case-law makes it necessary to find other sources for discussion on the relevant issues relating to the law and practice of RNA. The lack of implementation, the real function or malfunction of the RNAL cannot be analysed or explained by simply relying on the reading of the articulated rules. In order to have a concrete discussion on the relevant issues of the RNAL, specific cases illustrating controversial aspects of the law and its implementation need to be found. In line with this thought, a case study approach is employed as one of the research methods to present the observations of the RNAL, to describe “what the law is” in practice rather than to explain the “law on paper” or to express subjective opinions on “what the law should be”. In view of the weak supervision and implementation of RNA some research has been presented along this approach.<sup>36</sup>

The exercise of the autonomous powers of RNA is one main concern. Studies on the practice in relation to legislation in ethnic affairs contribute to the understanding of RNA.<sup>37</sup> A remarkable shortcoming in the establishment of the RNA can be observed in the lack of autonomous regulations among the five autonomous regions in China.<sup>38</sup> Another main concern is the effective exercise of the autonomous power in developing local economy.<sup>39</sup> Other fields such as education, language, minority customs and way of life in relation to autonomy have been studied.<sup>40</sup>

Case studies are the main approach of the research presented in this special issue. We present case studies which relate closely to important and controversial issues in respect of the law and practice of RNA and minority rights protection. The rights to enjoy culture and ways of life in the case of the Oroqen nationality, linguistic rights in the case of the Dai nationality, and religious and cultural freedoms in the cases of the Naxi, Premi and Hui nationalities, as well as the possibilities for enjoying effective participation in nationality townships in Yunnan illustrate some of the controversial aspects of the present legal system.

<sup>36</sup> The early research on the implementation of RNAL in Guangxi was presented by Xu and Wu, *Studies on the Implementation of RNAL* (Guangxi Minzu Publishing House, 1997).

<sup>37</sup> See Wu and Ao (eds.), *Theory and Practice of Ethnic Law Legislation in China* (China Democracy and Law Publishing House, Beijing, 1998).

<sup>38</sup> Zhang Wenshan, *Studies on Autonomous Power and Autonomous Regulations* (Law Press, Beijing, 2005), and *Studies on the Issues of Relevant Legislations of RNAL* (Law Press, Beijing, 2007).

<sup>39</sup> See Liu Jinghai and Shi Wenzheng (eds.), *Studies on the Economic Autonomous Power of the Regional National Autonomous Areas in the Process of Developing the Western China* (Inner Mongolia People's Publishing House, Hohhot, 2003).

<sup>40</sup> Chen Lipeng, *Legislation on Minorities' Education* (Central University of Nationalities Publishing House, Beijing, 2008).



### 1.3. *General Political Principles vs. Specific Legal Mechanism of Rights and Remedies*

RNAL declares in the Preface that the purpose of RNA is “the State’s full respect for and guarantee of the right of the minority nationalities to administer their internal affairs” based on “the principle of equality, unity and common prosperity for all the nationalities”.<sup>41</sup> However, these principles are so vague that they cannot be applied in searching for solutions in real disputes. Observations on the results of the practice of RNA after 50 years raise suspicions about the real purposes of RNA. By examining the origins of RNA, several studies try to find out the implicit and real purposes of it.

The study on the establishment of Guangxi Zhuang Autonomous Region (GZAR) may be taken as one example. The real purpose of establishing GZAR was questioned and explored by three authors, G. F. Hudson, G. Moseley and D. Lary. Hudson argues that the CCP offered the Zhuang autonomy in order to distract from the important political issues relating to Xinjiang, Tibet and Mongolia. The peoples of Xinjiang, Tibet and Mongolia all have highly developed cultural traditions and meet the standards normally accepted in the contemporary world to qualify them as nations entitled to statehood.<sup>42</sup> Another analysis is made by G. Moseley in his study on the establishment of GZAR. He noted two different circumstances: on the one hand the lack of Zhuang demands for autonomy and on the other the need for the CCP to crush the local Han Chinese’ opposition in the area. He concluded that the vital political purpose to establish the GZAR was to serve the CCP’s immediate needs in relation to this area.<sup>43</sup> D. Lary’s assessment of the purpose of the establishment of the GZAR was to break up the strong regional identity of the inhabitants of the two Guang provinces, the east and the west, which was part of a single political unit.<sup>44</sup> The “national autonomy” of Zhuang was used to weaken the sense of regional autonomy from CCP’s control in the central level. In relation to the establishment of the Inner Mongolian Autonomous Region, Bulag concludes that “[t]he Inner Mongolian Autonomous Region was a product of the Chinese Communists need for Mongol support in the Civil War”.<sup>45</sup> Thus, these researches all find a quite different *raison d’être* from the aim of RNA as stated in the preface of the RNAL.

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<sup>41</sup> Preface of RNAL (adopted 1984 and revised 2001).

<sup>42</sup> G. F. Hudson, ‘The Nationalities of China’, in *St. Anthony’s Papers* (Chatto & Windus, London, 1960).

<sup>43</sup> G. Moseley, *The Consolidation of the South China Frontier* (University of California Press, Berkeley, CA, 1973) p. 85.

<sup>44</sup> D. Lary, ‘The Tomb of the King of Nanyue – The Contemporary Agenda of History: Scholarship and Identity’, *22 Modern China* (1996) pp. 3–27.

<sup>45</sup> Bulag, *supra* note 30, p. 90.

The purpose of RNA can also be explored by observing the results of the practice of RNA. In line with Bulag's question – “Whose autonomy in Inner Mongolia?” – Bovingdon describes the RNA in Xinjiang with the term “heteronomy” instead of “autonomy”. He concludes that “in Xinjiang, the purpose of this system has not been to make the non-Han masters of their own house, but rather to keep them in the house”.<sup>46</sup>

The perspective of this research is based on the assumption that the stated purpose articulated in RNAL is the “institutional purpose” of RNA. The inquiry is to exam whether the existing mechanisms of RNA can be functional for reaching the stated purpose. What are the obstacles of the institution preventing it to be the effective remedies for the articulated legal rights are issues which are discussed in the articles by Zhou Yong and Maria Lundberg in this volume.

## 2. The Role and Function of RNA and Its Challenges

As the basic political and legal institutional arrangement for solving issues revolving around China's minority nationalities, RNA has a broad scope which covers most of the essential aspects of political, economic, social and cultural affairs of the minority nationalities in China. The unprecedented tensions arising from ethnic conflicts, economic development and maintenance of cultural diversity represent practical and real challenges to the role and function of RNA. Whether RNA could provide adequate avenues for addressing these challenges has been an ongoing debate among various stakeholders of this institution.

The Chinese government issued a large amount of “white papers” on human rights and minorities since 1991. Among 19 white papers on the human rights situation in China, almost 50 per cent of them focus on minority issues (eight of them are specifically on issues relating to Tibet and one on Xinjiang). Two of the white papers especially focus on RNA, one is about RNA system in general, and another one is about RNA in Tibet. The conclusion that the RNA is an “immense success” is emphasised in all these white papers.<sup>47</sup> On the contrary, improving the existing system towards a “functional”, “real” or “meaningful” autonomy is one of the main demands in the dialogue process between the delegation of Dalai Lama and the central government of China on the Tibet issue.<sup>48</sup>

<sup>46</sup> G. Bovingdon, ‘Heteronomy and Its Discontents’, in Rossabi, *supra* note 28, pp. 119–120.

<sup>47</sup> *Regional Autonomy for Ethnic Minorities in Tibet* (2004) and *Regional Autonomy for Ethnic Minorities in China* (2005), Information Office of the State Council of the People's Republic of China, Beijing. See <[www.china-un.org/eng/zt/xzwt/t418939.htm](http://www.china-un.org/eng/zt/xzwt/t418939.htm)>; <[www.china.com.cn/ch-book/20050228/index.htm](http://www.china.com.cn/ch-book/20050228/index.htm)>.

<sup>48</sup> See Summary of the Memorandum on Genuine Autonomy for the Tibetan People, <[www.tibet.net/en/index.php?id=77&articletype=press](http://www.tibet.net/en/index.php?id=77&articletype=press)>.

Among the governments concerned about this issue, the USA is one of the most active States to describe and report on human rights, autonomy and minority situations in China. The annual reports by the USA Department of State on the religious freedom<sup>49</sup> and human rights<sup>50</sup> in China have their special focus and data in relation to these aspects of the RNA. The implementation of the RNAL and Chinese minorities was the special focus of the 2005 annual report by the USA Congressional-Executive Commission on China.<sup>51</sup> Non-governmental sources have also expressed concerns on the extremely limited functions of RNA, which has even accused to play the role to work “as a mechanism for minority exclusion and state control”.<sup>52</sup>

Our research shows that there are enormous challenges to RNA within the institutional framework of the largest unitary State in the world especially from the perspectives of human rights protection and the rule of law principle. We outline issues in three areas which are main challenges to the role and functions of the RNAL to become meaningful for China’s minority nationalities, *i.e.* ethnic conflict, group identity and cultural survival, and the interests of minority nationalities in economic development.

### 2.1. *Ethnic Conflict as a Challenge*

According to the law, the main functions of RNA are to develop a relationship of equality, unity and mutual assistance among all the nationalities and to consolidate the unification of China.<sup>53</sup> Although the emphasis was put on the “immensely successful” achievements of RNA in the governmental white paper on RNA in 2005,<sup>54</sup> the existing ethnic tensions cannot be overlooked.<sup>55</sup>

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<sup>49</sup> See *International Religious Freedom Report* (2008), US Department of State, <[www.state.gov/g/drl/rls/irf/2008/108404.htm](http://www.state.gov/g/drl/rls/irf/2008/108404.htm)>.

<sup>50</sup> 2008 *Country Reports on Human Rights Practices in China*, <[www.state.gov/g/drl/rls/hrrpt/2008/eap/119037.htm#tibet](http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119037.htm#tibet)>.

<sup>51</sup> See the 2005 Annual Report by the USA Congressional-Executive Commission on China, <[www.state.gov](http://www.state.gov)>.

<sup>52</sup> See Preface, *China: Minority Exclusion, Marginalization and Rising Tensions*, HRIC, commissioned by MRG, 2007, <[www.hrichina.org/public/PDFs/MRG-HRIC.China.Report.pdf](http://www.hrichina.org/public/PDFs/MRG-HRIC.China.Report.pdf)>.

<sup>53</sup> Preface of the RNAL.

<sup>54</sup> Government White Paper 2005: *Regional Autonomy for Ethnic Minorities in China*, Information Office of the State Council of the People’s Republic of China, 28 February 2005, <[www.china-un.org/eng/zt/xzwt/t418939.htm](http://www.china-un.org/eng/zt/xzwt/t418939.htm)>.

<sup>55</sup> The Chinese conception and practice of RNA have received international attention, *see e.g. China: Minority Exclusion, Marginalization and Rising Tensions*, MRG Report, 17 April 2007, ISBN 1 904584 56 X, <[www.minorityrights.org/?lid=1083](http://www.minorityrights.org/?lid=1083)>. The status of Tibet is both a legally and a politically controversial issue. A comprehensive argument for the independence of Tibet is made by M. C. Van Walt van Praag, *The Status of Tibet. History, Rights, and Prospects in International Law* (Wisdom Publications, London, 1987). Tibetans are mentioned as one example of a people living

The ethnic conflicts in China are signified by either minority secessionist movements or autonomist movements, especially pursued by the political organisations of the Mongolian, Uyghur and Tibetan peoples. For example, the goal of the Inner Mongolian People's Party is to establish an independent State of Inner Mongolia,<sup>56</sup> and in 1995, in its journal,<sup>57</sup> another Mongolian organisation, the Southern Mongolian Democratic Alliance,<sup>58</sup> outlined in its Constitution that its main mission was “opposing colonization by the Han people and striving for self-determination, freedom and democracy in Southern [Inner] Mongolia”. Furthermore, the Uyghur's East Turkestan Islamic Movement (ETIM) is a militant organisation that advocates the creation of an independent Islamic State of East Turkestan. ETIM is listed as a terrorist organisation by the governments of the PRC, Kazakhstan, Pakistan and the United States, as well as by the United Nations. In 2004, the East Turkestan Government in Exile<sup>59</sup> was formed in Washington DC and the Constitution of the Government-in-Exile of the East Turkistan Republic was adopted “to provide measure, to insure that the people of East Turkistan and their children live in liberty and, to show the true path of what the people of East Turkistan must go through after they attain their independence”.<sup>60</sup>

The Central Tibetan Administration of His Holiness the Dalai Lama, commonly referred to as the Tibetan Government in Exile, is headed by Tenzin Gyatso, the 14th Dalai Lama, and claims to be the rightful and legitimate government of Tibet. The Tibetan independence movement is a movement to establish the “historical Tibet”, comprising the three traditional provinces of Amdo, Kham, and Ü-Tsang, as an independent State. However, the goals of the Tibetan independence movement are different from the goals of the Dalai Lama's “middle way” proposal, which emphasises autonomy instead of independence. In all his recent speeches, the Dalai Lama reiterated that he does not want independence for the Tibetan people, but “real” or “meaningful” autonomy for Tibet within China in accordance with the aims of the RNAL.<sup>61</sup> Some kind of “autonomy” within the Chinese realm seems to constitute the basis for the ongoing Sino-Tibetan dialogue. While this dialogue encountered a deadlock in 2008, the

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under *colonial rule or comparable alien subjugation* and therefore entitled to the right of self-determination. See M. Nowak, *UN Covenant on Civil and Political Rights. CCPR Commentary*, 2nd revised edition (N. P. Engel Verlag, Kehl, Strasbourg, 2005) p. 22, para. 31. The relationship of Tibet to China is one part of US policy towards China, see M. C. Goldstein, ‘Tibet and China in the Twentieth Century’, in Rossabi, *supra* note 28, pp. 186–229.

<sup>56</sup> <[en.wikipedia.org/wiki/Inner\\_Mongolian\\_People%27s\\_Party](http://en.wikipedia.org/wiki/Inner_Mongolian_People%27s_Party)>.

<sup>57</sup> The journal *Voice of Southern Mongolia* was banned in 1995 in China.

<sup>58</sup> <[en.wikipedia.org/wiki/Southern\\_Mongolian\\_Democratic\\_Alliance](http://en.wikipedia.org/wiki/Southern_Mongolian_Democratic_Alliance)>.

<sup>59</sup> <[eastturkistangovernmentinexile.us/](http://eastturkistangovernmentinexile.us/)>.

<sup>60</sup> <[www.eastturkistangovernmentinexile.us/et\\_constitution.html](http://www.eastturkistangovernmentinexile.us/et_constitution.html)>.

<sup>61</sup> <[edition.cnn.com/2007/US/10/17/dalai.lama/index.html](http://edition.cnn.com/2007/US/10/17/dalai.lama/index.html)>, last visited on 2 September 2008; <[www.tibet.net/en/index.php?id=84&articletype=press](http://www.tibet.net/en/index.php?id=84&articletype=press)>.

Tibetans presented the Memorandum for Genuine Autonomy for the Tibetan People in November 2008<sup>62</sup> as a basis for substantive discussions which the international community has urged the Chinese government to consider.<sup>63</sup> The European Union Parliament adopted a resolution on the 12th of March 2009 – the 50th anniversary of the Tibetan “uprising”, as it is called by Dharamshala, or “rebellion” as called by Beijing – calling for dialogue between the Dalai Lama and the Chinese government to encourage both parties to move forward with a substantive, constructive and results-oriented dialogue at an early date.<sup>64</sup>

There are successful and unsuccessful cases to employ various forms of autonomy for the purpose of ethnic conflict resolution. At present, RNA is the only political platform that both the central authorities and minority political nationalists can meet and negotiate. However, it is a challenge whether the Chinese RNA can serve as a useful institutional framework for a viable solution with a balance among the different interests of various stakeholders involved in the situation of existing ethnic tensions. Studies on RNA are important in order to create a foundation for an informed debate on finding possible alternatives for what a “meaningful autonomy” for minority nationalities could entail within the specific Chinese legal and political context adhering to the international human rights framework.<sup>65</sup>

## 2.2. *Minority Identity and Cultural Survival as a Challenge*

There are clear rules articulated by the Chinese Constitution which seem to provide a strong legal basis for minority nationalities to maintain their group identity and distinctive culture. It reads that “[t]he people of all nationalities have the freedom to use and develop their own spoken and written languages, and to preserve or reform their own ways and customs”.<sup>66</sup> In addition, these freedoms shall be guaranteed by the organs of self-government in RNA areas.<sup>67</sup> However, China has since a long time pursued the idea of reform of minority communities for reasons of “social progress”. The “civilisation project” based on the dominant

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<sup>62</sup> See *Summary of the Memorandum on Genuine Autonomy for the Tibetan People*, <[www.tibet.net/en/index.php?id=77&articletype=press](http://www.tibet.net/en/index.php?id=77&articletype=press)>; <[www.atc.org.au/campaigns/the-middle-way-mainmenu-175/873-memorandum-on-autonomy](http://www.atc.org.au/campaigns/the-middle-way-mainmenu-175/873-memorandum-on-autonomy)>.

<sup>63</sup> <[www.savetibet.org/policy-center/european-international-actions/eu-us-summit-declaration-joint-statement-sino-tibetan-dialogue-10-june-2008](http://www.savetibet.org/policy-center/european-international-actions/eu-us-summit-declaration-joint-statement-sino-tibetan-dialogue-10-june-2008)>.

<sup>64</sup> See the European Parliament resolution on the 50th anniversary of the Tibetan uprising and dialogue between the Dalai Lama and the Chinese Government, <[www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+P6-RC-2009-0135+0+DOC+WORD+V0//EN](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+P6-RC-2009-0135+0+DOC+WORD+V0//EN)>.

<sup>65</sup> UN documents such as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN, 1992) and OSCE documents encompassing the notion of comprehensive security link the safeguarding of minority rights to internal stability and external security of States.

<sup>66</sup> Article 4 of the PRC Constitution.

<sup>67</sup> Article 10 of the RNAL.

unilinear social evolutionary theory, which is part of the CCP's ideology,<sup>68</sup> is contradictory to the principle of “equality among nationalities” asserted in the Constitution and the RNAL. By identifying minority societies into various evolutionary stages, as the CCP has done, the so-called “backward” minorities lose the justification for pursuing their legal right to claim their “freedom to maintain their own customs”. These competing institutionalised values, norms or rules from various sources influence the interpretation and practice of RNA. The following State projects are a few of the main grounds endangering the minority groups' identity which challenge the effective function of RNA:

(1) The “civilisation project” to reform minorities' way of life and social organisation

Although the above principle and RNA were articulated in 1949, the social reform project had been carried out to “civilise” minority society during the whole of the 1950s. In the Oroqen Autonomous Banner (OAB), the Oroqen way of life, perceived as “the backward lifestyle of primitive society”, became the target of this reform. The possibilities of Oroqen to survive as a distinctive hunters' group has come into question.<sup>69</sup> The State's drive for changing the Oroqen hunters into a sedentary way of life started in earlier 1950s, and the whole process was completed in 1958. It was the State that initiated and carried out the establishment of a sedentary way of life among the Oroqens with the stated purpose to change their “backward” way of life and their “primitive” form of social organisation. To the advocates of the “civilised, progressive way of life”, Oroqen's traditional values and folkways, knowledge and skills were all insignificant. Wearing the spectacles of the unilinear evolutionary theory, the Oroqen's language, culture, as well as their hunting skills were doomed and would be replaced by modern civilisation. Only by discarding their traditions as soon as possible could the Oroqens ascend to the rank of “advanced nationalities”. This ideology has been very influential even in the late 1990s when the government of OAB adopted the decision of “hunting ban” in the autonomous area. The justification for banning hunting in this RNA area is said to be that hunting is a backward way of life.

(2) Natural resources exploration projects resulting in migration and demolishing the material basis of minorities' culture

It is quite a common phenomenon that large amounts of Han migrant workers move into the RNA areas for exploring natural resources organised by the State.

<sup>68</sup> The ideology of the CCP is the Marxist social evolutionary theory based on Lewis H. Morgan's study on ancient society.

<sup>69</sup> M. Lundberg and Yong Zhou, ‘Hunting-Prohibition in the Hunters' Autonomous Area: Legal Rights of the Oroqen People and the Implementation of Regional National Autonomy Law’, 16(3) *International Journal of Minority and Group Rights* (2009) 349–397, this issue.

It has had a huge impact on the practice of RNA and the maintaining of the minority cultures. In the OAB, the “backward hunters” became marginalised in their homeland partly because large number of migrants from other nationalities (especially Han) moved into the area of which they were the “masters”. The migrants took part in the development of the forest industry by the large forest companies, while the Oroqens were left out. As a result, the proportion of Oroqens was reduced to 0.7 per cent of the population from having been 99.5 per cent at the time of the establishment of the OAB in 1951. The possibilities for the Oroqens to sustain their culture became limited and their participation in the governance of the OAB was questioned, due to their numbers and the view that the Oroqens were a “backward” group and their cadres were of “lesser quality”.

There is another tendency of migration in RNA areas. We found minority migrant workers had been continuously ‘moving out’ of their homeland in our fieldwork in Honghe Hani Yi Autonomous Prefecture. It has become an urgent problem that due to migration the sustainable cultivation of the Hani terraced fields is about to be disrupted. The inequitable access to the benefits of economic development and the influence of the unilinear evolutionary theory have made lots of young and middle-aged villagers migrate to work in other places, and the terraced plots have been left without cultivation. It is difficult to find enough young people that are willing to take on this kind of work that the farming of the terraced fields entails. They can neither see this as a modern way of making their living nor a way to participate in the quick economic development. The remaining local villagers are greatly concerned, feeling that the continuation of their traditional way of life is at risk. These two situations of the Hani and the Oroqens are examples of how migration following upon economic development, with labour flowing in or out of the autonomous area, poses a threat to the survival of the traditional ways of life and cultures of the minority nationalities.

The distinctive ways of life and culture, such as hunting, fishing or nomadic herding, are intrinsically linked to their special environment and material basis. The material basis of the Oroqen culture in the OAB is the forest and wild animals living inside the forest. However, these material resources were heavily exploited by the timber industry developed by the State-owned companies. After the central authorities in the 1950s decided to exploit the forest resources in the Great Xingan Mountain, the Oroqen hunters were moved out of the forest and lost their rights to access to the forest. After more than four decades of devastating logging, the resources of wild animals had vanished. Eventually, the OAB as the hunters’ RNA area and homeland announced the decision of total prohibition of hunting in 1996. The reality is that despite the rules articulated in the Constitution and RNAL on the freedom to preserve minorities’ own folkways and customs, the destruction of the material basis of the Oroqen culture deprived the Oroqen people of their cultural survival.

## (3) Minority cultural resources exploration project and tourism

In addition to the selling of natural resources, the exploitation of minority cultural resources is another main economic development strategy of the authorities in the RNA areas of China. The governments expressly call for transforming ethno-cultural resources into ethno-cultural capital and tend to regard the diversity of ethnic culture as resources attractive to tourists instead of historical burdens for reform.<sup>70</sup> Tourism is now being regarded as the ‘smokeless industry’ without harmful affects on the environment. This reveals the economic practicality behind the official slogans like “to foster and carry forward the traditional culture”.

In the field work we have carried out in Liangshan Yi Autonomous Prefecture in Sichuan Province, Erdos City of Inner Mongolia and the Honghe Hani Yi Autonomous Prefecture in Yunnan, we found that the developments of the “cultural” tourist industry are ongoing without the interests of the local minority nationalities being taken into account and characterised by controversy and tensions existing among local government, minority nationalities and tourist companies.

In Inner Mongolia, the Genghis Khan Mausoleum<sup>71</sup> located in the Huojinyiluo Banner on the Erdos Plateau has been the holy place for the Mongols in the past centuries. According to their ancestral testament, the Darhuts of the Mongols guarded the tomb generation after generation, and formed their peculiar social organisation and way of life. The Genghis Khan Mausoleum is a great tourist attraction generating an annual income of more than ten million Yuan, which has made the local government interested in further commercial exploitation of the site. The plan for exploitation, the land-expropriation, the design of tourist souvenirs and the distribution of profits from admission are all controversial issues and have caused tension between the local government, the developer and the local Mongols, particularly the Darhuts.<sup>72</sup>

In Liangshan Yi Autonomous Prefecture in Sichuan Province, the culture of the local minority nationality, the Yi, is commercially exploited in various ways. Their traditional costumes, their festivals, such as the Torch Festival, and the Bimo practices, the Yi’s shaman, are regarded as important cultural resources and are changed and “improved” in various ways for tourist consumption. The use of these cultural resources touch essential aspects of the nationality’s identity and way of life and controversy has ensued about the role of the local governments in these development activities and the possibilities that the local Yi have had to give their input and share in the benefits of the development. In the case of Luoji Mount in Liangshan Yi Autonomous Prefecture, the tourist exploitation did not only fail to give any economic benefits to the local Yi villagers, but also caused

<sup>70</sup> See Tourist Bureau of Nujiang Lisu Autonomous Prefecture, *Plans for the Tourist Development during the Period of the Eleventh Five-Year Plan*.

<sup>71</sup> <[en.wikipedia.org/wiki/Genghis\\_Khan](http://en.wikipedia.org/wiki/Genghis_Khan)>.

<sup>72</sup> See Qihailin and Zhang Zhuhua’s paper, in Zhou Yong and Lundberg, *supra* note 18.



worsening surroundings, restriction on customary rights, loss of cultivated land and increased poverty among the local people.<sup>73</sup>

In Honghe Hani Yi Autonomous Prefecture in Yunnan Province, the local government takes protection and tourist exploitation of the Hani terraced fields as an important measure for promoting economic development and the protection of ethno-cultural resources in the area. The Prefecture government has applied for UNESCO World Cultural Heritage status, and made plans for tourist exploitation.<sup>74</sup> The Hani terraced fields are closely connected with the long farming civilisation in the area and are part of the traditional culture of the local people. However, the local villagers complain that despite the burgeoning tourist industry in the area, they do not get a fair share in the economic benefits while providing their cultural capital and services to the tourists.

In these cases, the development of tourism concern essential elements of the culture of these minority nationalities. However, in the process of exploring these cultural resources, it has been ignored that according to the RNAL it is the minority nationality group that shall be the master of their own affairs and have the “freedom to preserve or reform their own folkways and customs”. The autonomous organs have the obligation to protect the interests of the local minorities, both as a group and as individuals, when administering local economic development projects.<sup>75</sup>

From these basic rules we deduce two kinds of obligations of the State. Firstly, the State, including central and local authorities, has the negative obligation of non-interference, that is, not to intervene in the ethnic folkways and customs. With regard to the Oroqens, whether to preserve or reform their way of nomadic hunting should be decided by themselves. In the exploitation of minority cultural resources, the minority nationality group shall exercise their autonomy and be the subject of deciding on the use of their culture. Secondly, the State has the positive obligation to take measures to facilitate, promote and protect the choices and interests of the people. With regard to the Oroqens, the prescription of the Constitution should logically include the protection of the material foundation and the environment on which the survival of the ethnic folkways and customs relies. The destructive exploitation of the forest and the environment on which the survival of Oroqens’ hunting life relies deprives Oroqen hunters of their means of subsistence and means to preserve their way of life. By taking no positive measures to entitle Oroqens access to the forests and to utilise the animal or botanic resources in the area constitutes a violation of the fundamental principles of the Constitution.

The implementation of the RNAL on the rights and interests of minority nationalities as part of law and policy has become subject to continued public

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<sup>73</sup>) See Kang Hua’s paper, in Zhou Yong and Lundberg, *supra* note 18.

<sup>74</sup>) See Fang Hui’s paper, in Zhou Yong and Lundberg, *supra* note 18.

<sup>75</sup>) Article 25 of the RNAL.

discussion and scrutiny in international organs and in civil society in light of China's ratification of major human rights instruments during the last two decades.<sup>76</sup> Moreover, China has recently ratified two conventions in the field of protection of culture, which aim at preserving cultural diversity as part of the heritage of mankind.<sup>77</sup> These international undertakings create a further impetus giving priority to addressing RNA from the "ethnic" perspective. The challenge is whether minorities can be the subjects exercising their rights through the institutional arrangement of RNA to safeguard their cultural, linguistic and religious identity and preserve cultural diversity in the PRC.

### 2.3. *Interests of Minorities in Economic Development as a Challenge*

The RNAL regulates the economic development in two aspects: one is to authorise the organs of self-government in RNA areas to adopt special policies and flexible measures in the light of local conditions to speed up the economic development, and the other is to articulate the responsibilities of State organs at higher levels to provide financial, material, personnel and technical assistance to help accelerate the development.<sup>78</sup> The key points of these rules are that the State organs at higher levels should pay due regard to the local and group interests of the RNA areas in their decision-making process and development activities. The local RNA authorities can under certain conditions independently arrange for and administer local economic development while enjoying certain preferential policies of the State.

By linking these norms with the stated purpose of RNA, the "peculiarities and the needs of the different minority nationalities" shall form the basis of the development strategy of the State.<sup>79</sup> In dealing with special issues concerning the various nationalities within its area, full consultation with their representatives must be conducted and their opinions shall be respected.<sup>80</sup> Therefore, there is a legal basis

<sup>76</sup> China has ratified several conventions which are of importance to this field, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR). China signed the International Covenant on Civil and Political Rights (ICCPR) in 1998. See e.g. Concluding Observations of the CERD in 1996, UN Doc. CERD/C/304/Add. 15, 27 September 1996, para. 25, "The Committee recommends that the elaboration and adoption of autonomy regulations for the five autonomous regions, which were envisioned in the 1984 Law on Autonomous Regions, be expedited."

<sup>77</sup> China ratified two conventions in the field of protection of culture, the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) ratified on 2 December 2004, and the UNESCO Convention on the Protection and Promotion of Cultural Diversity (2005) ratified on 30 January 2007.

<sup>78</sup> Articles in Chapter III in the RNAL concern the power of autonomy of the organs of self-government are the main regulations of the first aspect, while Chapter VI is on the second aspect.

<sup>79</sup> Article 4 of the Constitution.

<sup>80</sup> Article 51 of the RNAL.

for the minority nationalities exercising regional autonomy to be the masters to administer the development which is meaningful for them and to benefit from the economic development. The State should respect the rights of minority groups and their members to maintain and develop their specific languages, religions and ways of life in planning and implementing development strategies and related projects.<sup>81</sup> However, the projects of economic development pursued in RNA areas reveal the tensions between different aims and means of development by the State and by the local minority nationalities. The challenge is whether the institutional arrangements of RNA can provide minority nationalities the possibilities for pursuing their meaningful development and their legitimate interests in their concentrated communities where the State economic development projects are carried out. In this part, we will present our observations based on the case studies in relation to natural resources exploration, environmental protection and urbanisation in the RNA areas.

In China, “minority areas” are rich on natural resources important for the nationwide stride to achieve high economic growth.<sup>82</sup> The tensions between the aims and functions of RNA and the goals and means of development pursued by the State are of particular relevance when looking at the development strategy of the “large-scale development of the western region”, *xibu da kaifu*, started in the beginning of 2000. The “western region” in this development strategy is not a strictly geographically defined concept. Instead, this concept is linked to the economically under-developed region of China which covers 90 per cent of the RNA areas and 80 per cent of the whole minority population in China.<sup>83</sup> It includes as means to achieve development in the sense of GDP growth exploration of natural resources and infrastructure building.

The exploitation of natural resources in these areas is vital to solving the national shortage in energy and guaranteeing the high national economic growth. To produce electricity and transfer it from western to eastern regions is one of the key projects of the western development strategy. Hydro-power as a kind of “green energy” has become the priority of the energy industry not only in local areas but also in the country as a whole.

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<sup>81</sup> Articles 4 and 33 of the 1982 Constitution as amended; the preface, Articles 10 and 56 of RNAL.

<sup>82</sup> Mao Zedong once said: “We used to say the China has a large population and vast territory with abundant resources. As a matter of fact, it is the Han nationality who have a large population, while minority nationalities cover a vast territory with abundant resources, at least the subterranean resources.” See Mao Zedong, ‘On the Ten Major Relations’ (April 25, 1956), in *Mao Zedong Wenji* [Works of Mao Zedong] (People’s Publishing House, Beijing) p. 33.

<sup>83</sup> There are 155 national autonomous areas across China. The five autonomous regions all belong to the range of western development. Of the 30 autonomous prefectures, only three are not included in the range of the western development, but still treated as part of the project and enjoy the preferential policies of the western development. Nearly 70 per cent of autonomous counties (or banners) are included in the project.

We have studied two cases of hydro-power exploitation in minority areas, one in Nujiang Lisu Prefecture<sup>84</sup> in Yunnan Province,<sup>85</sup> and the other in Liangshan Yi Autonomous Prefecture in Sichuan Province.<sup>86</sup> Both areas have lagged behind in the fast economic development and poverty is widespread among local people. However, the two places are rich in hydro-power resources. The local authorities regarded the development of hydro-power projects as the rare possibility for local development. They believed that the hydro-power exploitation would promote the all-round development in local infrastructure, and the taxes and fees imposed from the resource exploitation would fundamentally help to improve the local conditions as well as the local revenue, to put an end to the situation described as “beg bread with a gold bowl”. Therefore, the two autonomous areas both made hydro-power exploitation as the priority in the local strategy for economic development.

The first concern of our study on RNA is the influence that the minority nationalities and the autonomous organ of the RNA can have on the decision-making process in these development projects. According to RNAL, under the State plans and law, the organs of self-government of national autonomous areas shall, in the light of local characteristics and needs, work out the guidelines, policies and plans for economic development and independently arrange for and administer local economic development.<sup>87</sup> In addition, they may give priority to the rational exploitation and utilisation of the natural resources.<sup>88</sup> The RNAL also provides that the autonomous organs shall have the power to adopt special policies and flexible measures in the light of local conditions to speed up the economic and cultural development of these areas.<sup>89</sup> However, in practice, all the above rules articulated by the RNAL can be void with reference to the by-rules of relevant ministries under the State Council.

According to the rules formulated by the National Development and Reform Commission under the State Council, the construction of a hydro-power station of less than 25,000 kilowatts shall be examined and approved by the prefecture and municipality where the station is located, and the construction of a hydro-power station of 25,000–250,000 kilowatts shall be examined and approved by

<sup>84</sup> Among the 30 autonomous prefectures in the country, Nujiang Lisu Autonomous Prefecture has the highest ethnic percentage (92.2 per cent). It is also the poorest national autonomous prefecture. The local authorities hold that the exploitation of Nujiang River is the bridge to economic and social development in the whole prefecture, and it will play a vital role in the local development.

<sup>85</sup> See Yang Jinling, ‘Decision-making Mechanism in Hydro-power Exploitation on the Nujiang River’, in Zhou Yong and Lundberg, *supra* note 18.

<sup>86</sup> See Luohong Zige, ‘The Rights of National Autonomous Areas and Ethnic Groups in Hydro-power Exploitation: A Case Study of Liangshan from the Perspective of the Law of Regional National Autonomy’, in Zhou Yong and Lundberg, *supra* note 18.

<sup>87</sup> Article 25 of the RNAL.

<sup>88</sup> Article 28 of the RNAL.

<sup>89</sup> Article 6 of the RNAL.

the provincial authorities, but with the exception of trans-provincial or international rivers. The construction of a hydro-power station of above 250,000 kilowatts shall be examined and approved by the central government. Since Nujiang is an international river and the installed capacity of the hydro-power exploitation amounts to 21,320,000 kilowatts, neither the self-government organs of Nujiang Lisu Autonomous Prefecture nor the Yunnan provincial government has the powers to decide the hydro-power exploitation there. It is the organs of the central government that decide whether or how to exploit the hydro-power on the Nujiang River. The autonomous authorities of the Nujiang Prefecture could do nothing but accept the decision to exploit the natural resources or maintain the last freely flowing river as proposed by the environmentalists.

Furthermore, the RNAL also provides for the rule of consultation and respect for the opinions of local minority nationalities on the special issues of concern to them.<sup>90</sup> In the Nujiang case, there are resettlement plans of moving more than 50,000 persons of the local minority nationalities from their homeland in the valley. However, not only the local people but also the local governments at the prefecture, county or township level know little about the plans for the construction of Nujiang hydro-power station and the relocation plan for the population.<sup>91</sup>

The second concern of our study is the distribution of the economic benefits of the hydro-power exploration project. There are two main economic benefits that the local authorities may have: one is the fees from water resource usage, and the other is the tax on the increased value of the company. According to the regulation of Sichuan Province, the fees from water resource usage of a hydro-power station above 25,000 kilowatts shall be collected by the provincial authorities. Most of the hydro-power stations constructed in Liangshan are of this scale. In addition, according to the tax law, the overwhelming majority of enterprises of hydro-power exploitation pay their taxes on the increased value of the companies in the areas where they are registered, instead of in the areas from which the resources originate. This means that the local authorities of the Liangshan Yi Autonomous Prefecture cannot share the above economic benefits although all the hydro-resources exploitation activities are carried out within its territory.<sup>92</sup> Such systemic problems offend the aims of RNA and the legitimate economic interests of RNA areas as resource exporters.

Similar situations of inequitable sharing of the economic benefits between the RNA areas and their higher level State organs can be found in the case of the

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<sup>90</sup> Article 51 of the RNAL.

<sup>91</sup> Information collected during field visits in May 2005 in Nujiang Lisu Autonomous Prefecture, Gongshan County and Shigu Township in Yunnan Province.

<sup>92</sup> See Luohong Zige, 'Issues on the Rights and Interests of Minority Nationalities in Hydro-power Exploitation: A Case Study of Liangshan from the Perspective of the Law of Regional National Autonomy', in Zhou Yong and Lundberg, *supra* note 18.

forest exploitation in Oroqen Autonomous Banner in Inner Mongolia.<sup>93</sup> The tensions also exist in the division of the taxation benefits between the OAB and the organs at higher levels. The Hulun Buir League in Inner Mongolia Autonomous Region (IMAR), now the Hulun Buir Municipality, claimed 60 per cent of the tax benefits owed to the OAB. Such a claim can hardly be accepted by the authorities of OAB, particularly in view of their financial difficulties. OAB claims that, as a self-government authority, it has the power of autonomy in managing and using its revenue on its own by law.<sup>94</sup>

The above-mentioned unfairness has its institutional basis in issues of the ownership and management-system of natural resources. Although the RNAL even seems to empower the organs of the self-government in RNA areas to define the ownership of and the right to use certain kind of natural resources such as the pastures and forests within their areas,<sup>95</sup> they are in reality under the control of the central State authorities. In the OAB, the State-owned forest companies control and use 97 per cent of the forests on the territory without the Oroqen people having any real possibilities to access the forest for maintaining their way of life.

The RNAL articulates that the State shall “pay proper attention” to the productive pursuits and the lives of the minority nationalities there and “give due benefit compensation” to the RNA areas from which the natural resources are transported out of.<sup>96</sup> The recent inspection on the implementation of the RNAL by the Standing Committee of National People’s Congress (NPC) confirms that the malfunction of this rule is a severe challenge to RNA. Reading this provision in light of the aim of the law, such “proper attention” and “compensation” should include the reasonable payment to local minority nationalities for their direct or indirect loss in the natural resources exploitation, including the restrictions on and damages to their ways of life.<sup>97</sup> The compensation is owed not only to the autonomous authorities of that area, but also to “the group” to prevent their cultural and economic marginalisation in the economic development process.<sup>98</sup>

Environmental and ecological destruction as the result of previous inappropriate natural resources exploration has followed upon the great development projects

<sup>93</sup> See Lundberg and Zhou, Hunting Prohibition, 16(3) *International Journal of Minority and Group Rights* (2009) 349–397, this issue.

<sup>94</sup> Article 32 RNAL provides: “The finance of a national autonomous area constitutes a particular level of finance and is a component of State finance. The organs of self-government of national autonomous areas shall have the power of autonomy in administering the finances of their areas...”

<sup>95</sup> Article 27 of the RNAL.

<sup>96</sup> Article 65, para. 1 of the RNAL.

<sup>97</sup> The notion of “due benefit compensation” includes both elements, see Article 65, para. 1: “State shall take measures to give due benefit compensation to the national autonomous areas from which the natural resources are transported out.”

<sup>98</sup> *C.f. also* Article 55, para.1 of the RNAL: “State organs at higher levels shall ... provide financial, monetary assistance ... to help them to help accelerate the development of their economic ... cultural ... affairs.”

pursued since the 1950s in minority areas. Natural resources, whether forest, grassland or water, in the RNA areas have been used in the drive for greater economic development. The autonomous authorities could exert no influence on the decisions for these development projects and they had just to follow suit with the general policies and projects. However, with the enactment of the RNAL in 1984, the environmental and ecological concerns should be within the sphere of influence of the autonomous authorities and it should be taken into account in the development plans of the State.<sup>99</sup> Forest and grassland protection projects have been an important agenda for the State since the mid-1990s. In this process RNA fails as well in its function of protecting the legitimate interests of the minority nationalities' culture and way of life.<sup>100</sup>

The Oroqen case provides us an illustration of this development. Since 1996, hunting has been prohibited in OAB, which entails that the Oroqens, “the magic hunter in forests”, can no longer maintain their traditional way of life in their only autonomous area. The forest and wildlife form the material base of the traditional way of life of the Oroqens. The hunting prohibition could be said to be the outcome of long-term exploitation of the forest resources in the Great Xing'an Mountains and the exhaustion of the wild animal resources in the area, despite that the autonomous authorities shall guarantee the Oroqens the “freedom to preserve or reform their own folkways and customs”, according to the Constitution and the RNAL.<sup>101</sup>

Article 66 of RNAL requires that “where national autonomous areas make contribution to the ecological balance and environmental protection of the State, the State shall give them due benefit compensation”. The recent inspection by the Standing Committee of NPC recognised that this rule is not implemented well when State projects for environmental protection are carried out in the RNA areas. This reality drives the local authorities of RNA areas to carry out the projects of natural resources exploration even by sacrificing the consideration of the environmental protection. It is definitely not good news for the local authorities of the Nujiang Prefecture when the central government tabled the Nujiang hydro-power project. It means that the local authorities can neither get any benefits from the investment nor compensation for their contributions to the ecological balance and environmental protection.

In the economic development the process of urbanisation in China is very rapid, which also has had an effect on RNA. Autonomous counties and prefectures

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<sup>99)</sup> See Articles 27, 28, 63, 66 of the RNAL.

<sup>100)</sup> There is ample evidence of this kind of development. See e.g. Forest protection in Liangshan Yi Autonomous Prefecture; grassland protection in Inner Mongolia Autonomous Region, establishment of nature preservation zones in Xishuangbanna Dai Autonomous Prefecture, see Zhou Yong and Lundberg, *supra* note 18.

<sup>101)</sup> Article 4 of the Constitution and Article 10 of the RNAL. See Lundberg and Zhou, Hunting-Prohibition, 16(3) *International Journal of Minority and Group Rights* (2009) 349–397, this issue.

are changed into “normal” cities, changing their administrative status from rural to urban. An RNA area is originally considered to be part of the countryside or the rural community, thus there are no such terms as “autonomous city” or “autonomous town” in the Constitution and the RNAL. Since 1990, there have been changes in ten autonomous areas affecting the exercise of autonomy of minority nationalities. As one example, the case of the creation of Lijiang City may be mentioned.<sup>102</sup> In 2002, the establishment of Lijiang City replaced the Lijiang District and Lijiang Naxi Autonomous County which was the only autonomous area for Naxi, and was approved by the State Council. At the same time, the Yulong Naxi Autonomous County was established within Lijiang City. A main difference between this case and other cases of cancelled autonomous areas is that the new Yulong Naxi Autonomous County has taken the place of the old Lijiang Naxi Autonomous County, thus the Naxi did not lose their only autonomous area. However, around 200,000 Naxi residents who originally lived in Lijiang Autonomous County have been divided into two different administrative jurisdictions: about 120,000 Naxi people live in the new Yulong Naxi Autonomous County and more than 80,000 Naxi people have become the minority nationality in the city of Lijiang’s old town district (now Guocheng District) or a nationality that lives scattered. Therefore, these 80,000 Naxi people lost their rights as the nationality that exercise RNA.

From economic and cultural perspectives, however, the administrative change which resulted in the old town of the Naxi, a World Cultural Heritage site since 1997 and an important tourist spot that generates substantial economic revenues, being parted from the new Yulong Naxi Autonomous County has had an important impact on the financial capacities, economic development and cultural “value” of the regional national autonomy area of the Naxi. Furthermore, due to this change the policies and laws for protecting and promoting the culture, traditions and language emphasised under the RNA does not apply to the Naxi residents any longer. Thus, the underlying notion that RNA is put on a par with a rural area becomes contradictory to the concept of “development” which is seen as linked to “modern” city status.

To sum up, we can see that the Chinese model of development is a model of “economic growth”. Its goal is to maximise per capita GDP growth. The major means to reach such growth are to increase investment and develop infrastructure. In China, all the development goals and strategies put forward by the Party-state since the 1950s have been based on this model of development. This can be seen in expressions such as the “output of iron and steel”, “four modernisations”, “taking economic development as the central task”, and “building a moderately

<sup>102</sup> Field visit with Yunnan University Law School in May 2006.



prosperous society”.<sup>103</sup> Economic growth has been regarded as the primary solution for all problems,<sup>104</sup> and GDP as the most important indicator to measure development.<sup>105</sup>

The preconceived idea in China that economic growth will eventually benefit everyone in society has proven to be problematic. In view of increased social tensions and ecological-environmental crisis, a new conception of development, the “New Outlook on Development”, also known as “Scientific Outlook on Development” (*kexue fazhan guan*), has been proposed since 2003. It emphasises “putting people first” and underlines comprehensive, balanced and sustainable development, ecological conservation, harmonious society and social equity. This development strategy was included as the “important guiding principle for economic and social development” and the “major strategic thought” into the Constitution of the CCP by the 17th National Congress of the Party.<sup>106</sup> It seems possible that this will strengthen the legitimacy of the aims and institution of RNA.

In RNA areas, minority nationalities shall be the subjects of development and RNA shall secure that these groups are the “masters of their own affairs”, also in relation to different measures to implement the development policy. The key challenge is whether the RNA makes it possible for them to voice their interests and to have influence on decision-making or to determine their own priorities for development. In these areas the implementation of the development policy pursued should be in accordance with the purpose of RNA. Only by putting the minorities who exercise the autonomous rights as the subjects of development can the Constitutional principles of equality, unity and common prosperity for all nationalities be realised.

We see from our research that in reality many so-called development projects pursue essentially no more than economic growth and exert manifold threats and

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<sup>103</sup> When first putting forward the expression of “moderately prosperous society”, Deng Xiaoping only used the criteria of per capita income, *i.e.* with the per capita GDP up to USD 800–1000. See Hu Angang, *Zhongguo Xin Fazhan Guan* [China: New Outlook on Development] (Zhejiang People’s Publishing House, Hangzhou, 2004) p. 198.

<sup>104</sup> Even for issues of regional autonomy for ethnic minorities. Deng once said: “Autonomy means economic development, otherwise it would be empty.”

<sup>105</sup> The importance of the measures to increase economic development in minority areas is emphasised in the Government White Paper 2005: *Regional Autonomy for Ethnic Minorities in China*, Information Office of the State Council of the People’s Republic of China, 28 February 2005, V(1) *Rapid Economic Growth* and V(2) *Obvious Rise of Living Standards*.

<sup>106</sup> See ‘General Program’, Constitution of the Communist Party of China, amended and adopted at the Seventeenth National Congress of the Communist Party of China on 21 October 2007, <[news.xinhuanet.com/english/2007-10/25/content\\_6944738.htm](http://news.xinhuanet.com/english/2007-10/25/content_6944738.htm)>. “Since the Sixteenth National Congress, the Central Committee of the Party has followed the guidance of Deng Xiaoping Theory and the important thought of Three Represents and, by pooling the wisdom of the whole Party to meet new requirements of development, formulated the Scientific Outlook on Development, which puts people first and calls for comprehensive, balanced and sustainable development.”

challenges to rights and interests of ethnic minorities in respect of the minorities' economic interests and their own values, cultural identity and ways of life. When exploiting natural and cultural resources or carrying out ecological and environmental conservation in minority areas, the State or organisations neglect that local minorities and their members may have a different judgment, interpretation and assessment of “meaningful development”. In view of the limited decision-making power of RNA authorities and the lack of effective participation or consultation procedures of the local people, it is a real challenge to see whether the institutional arrangements having the RNAL as the core can provide for minority nationalities an “institutional guarantee” for maintaining their traditional way of life, their cultural identity and their legitimate interests.

### 3. RNA: Four Essential Elements and Its Chinese Characteristics

From scholarly writings on forms of autonomy, we see that different sets of criteria are used to make typologies of “autonomy”.<sup>107</sup> “Autonomy” in law and practice also means very different arrangements in different States. The description of the Chinese RNA here is based on the Chinese legal framework and its social context. Our discussion in this part is following four indispensable factors as formalised by the RNAL, *i.e.* (a) territory; (b) group; (c) organs of autonomy or self-government; and (d) autonomous powers.<sup>108</sup> We will discuss the norms and practices of these above-mentioned factors respectively. The special institutional arrangement and implications of this Chinese form of “autonomy” in relation to the stated aims of “providing the nationalities with the right to *administer their own affairs*” (emphasis added) will be highlighted.

#### 3.1. *The Territory*

RNA is a territorially based autonomy which is established where minority nationalities live in concentrated communities.<sup>109</sup> They are mainly located in the northeast, northwest and southwest parts of China. Many of these areas are

<sup>107</sup> A. Legaré *et al.*, ‘Introduction: Rethinking the Forms of Autonomy at the Dawn of the 21st Century’, 15 *International Journal on Minority and Group Rights* (2008) pp. 143–144, focus on “spatial” and “normative” considerations. M. Tkacik, ‘Characteristics of Forms of Autonomy’, Vol. 15 *International Journal on Minority and Group Rights* (2008) pp. 369–401, focus on scope of control, depth of control, and distinctiveness of territory.

<sup>108</sup> Ao Junde concludes that the institutional factors of the regional national autonomy consist of nationality exercising regional autonomy, national autonomous area, organs of self-government, autonomous power, and regulations on exercise of autonomy. See Ao Junde, ‘Guanyu Minzu Quyu Zizhifa de Liangge Jiben Wenti’ [Two Basic Questions about the Law on Regional National Autonomy], in No. 6 *Guizhou Ethno-National Studies* (2004).

<sup>109</sup> Article 2 of the RNAL.

Chinese inland border areas of Asia with about 15 neighbouring countries. From 1947 to 2003, there are now 155 RNA areas established, covering 64 per cent of the territory of the PRC.<sup>110</sup> In addition, as a supplement to RNA, about 1,173 ethnic townships have been established in 28 provinces until the end of 2004.<sup>111</sup>

Geo-political and historical issues have influenced the process of establishing and defining the vast territory of RNA where minority nationalities are “exercising regional autonomy”. Meanwhile, the State’s concerns and interests are reflected in relevant rules articulated in the RNAL, such as all national autonomous areas are “integral parts” of China, the RNA plays an enormous role in “consolidating the unification of the country”, and “local national chauvinism must be opposed”.<sup>112</sup>

In practice, State security and concerns for territorial integrity significantly affect the implementation of RNA. As an example, the territory of Inner Mongolia Autonomous Region was substantially decreased. Under the excuse of the preparation for war with USSR in 1969, three leagues in the east and three banners in the western part of IMAR were cut and transferred to the neighbouring provinces in 1969. The changes actually reduced the size of IMAR by about two-thirds. Similar situations can be found in the south part of China. Four autonomous prefectures of Dai, Jingpo, Lisu and Tibetan peoples in the border area of Yunnan Province were put under direct control by the neighbouring districts during this period of time. Therefore, the first landmark decision on re-establishment of the RNA system was made at the State Conference on the Defence Affairs of Border Areas by the Central Committee of CCP in 1979. After the Conference, IMAR regained to a large extent its former territory under the slogan “restore order from chaos”.<sup>113</sup> In the Xinjiang Uyghur Autonomous Region there are more than 100 areas of the Xinjiang Production and Construction Corps located on prime

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<sup>110</sup> The establishment of the Inner Mongolia Autonomous Government in 1947, two years before the founding of the PRC, is counted as the first RNA area by the Chinese official documents. In 1990, there was a formal speech by the Chinese Prime Minister, Li Peng, on the finalisation of establishing new RNA areas. The latest establishment of the Beichuan Qiang Autonomous County in Sichuan in 2003 is an exceptional case.

<sup>111</sup> PRC Government White Paper 2005: *Regional Autonomy for Ethnic Minorities in China*, Information Office of the State Council of the People’s Republic of China, 28 February 2005, <[www.china-un.org/eng/ztxwzt/t418939.htm](http://www.china-un.org/eng/ztxwzt/t418939.htm)>.

<sup>112</sup> Article 2 and the Preface of RNAL.

<sup>113</sup> “From 1949 to 1956 the area of the region was expanded through the incorporation of the former province of Suiyuan and parts of the provinces of Liaobei, Rehe, Chahar, and Gansu. Extensive boundary changes in 1969, however, considerably reduced the size of the province. The W Ala Shan desert region was given to Gansu and Ningxia Autonomous Region, and the northeast corner, which bordered on Russia, was divided between the Manchurian provinces. Hebei province also received a section of Inner Mongolia. These border changes were reversed in 1979, and the region was restored to its former size. Hohhot has been the capital since 1952; from 1947 to 1950 the capital was at Ulanhot (Ulan Hoto), and from 1950 to 1952 it was at Zhangjiakou (Kalgan; now in Hebei province).” ‘Inner Mongolian Autonomous Region’, *The Columbia Encyclopedia*, Sixth Edition, 2008, Encyclopedia.com, 17 March 2009, <[www.encyclopedia.com](http://www.encyclopedia.com)>.

agricultural land close to water or other natural resources, as well as in strategically important places for border security and social stability. The territory of the Xinjiang Production and Construction Corps amounts to 743 000 sq. kilometres, which is larger than the Ningxia Hui Autonomous Region. The particular administrative status of the Xinjiang Production and Construction Corps is at the level of a ministry, and directly under the leadership of the central government. The Xinjiang Autonomous Region and its local authorities have no jurisdiction over these areas.

There are clear links between the “areas where minority nationalities live in concentrated communities” and the concept of their “traditional homelands”. Taking IMAR as an example again, the reason for IMAR to have about 12 per cent of the whole territory of China is that the Mongolian people were promised to exercise their autonomy in their “traditional land” in the PRC by Chairman Mao in the 1940s. Xinjiang Uyghur Autonomous Region is even larger, amounting to about 17 per cent of the whole territory of China. The claim of establishing “larger Tibetan autonomous area” based on the notion of “traditional homelands” of the Tibetan people is estimated to about 25 per cent of the whole territory of China. The above three minority nationalities’ traditional homelands amount to more than half of the territory of the PRC.

However, even when the “concentrated communities” of the minority nationalities are evident and the population of such group is big, RNA may not be established for the specific group due to other considerations. The Manchu, having a population larger than 10 million had no RNA area before the 1980s in their homeland in northeast China. On the other hand, in order to establish a provincial level RNA for the Hui, Ningxia Hui Autonomous Region, who live scattered in all parts of the country, areas were cut from several provinces. The political willingness at the central level of the Party-state is a crucial element for the establishment of RNA.

Furthermore, one minority nationality concentrated community can also be intentionally put under the other minority nationality’s autonomous area. The capital of Bayingolin Mongol Autonomous Prefecture – Korla – is an Uyghur concentrated community. When it was decided that Artux – another Uyghur concentrated community – was to be the capital of Kizilsu Kirghiz Autonomous Prefecture many Uyghur cadres were not happy.

The territorial delimitation of an RNA area is decisive for many aspects of its proper functioning according to its stated aims. It affects such fundamentals including the subjects of the autonomy, *i.e.* the minority nationality or nationalities exercising autonomy, their proportion of the population; and the economic and cultural basis for the autonomy, including such territories as traditionally inhabited areas, natural resource rich areas, tourist sights, and cultural heritage. Practice shows that whether it is an extension or secession of the territory of RNA areas, the purposes tend to include many other elements, but exclude such fundamentals as the integrity of the minority nationality groups’ interests and identity.

There are many examples, more recent and from history, of the importance of the territorial delimitations of the RNA areas relating either to the establishment or to later alterations of the territory. The establishment of the Guangxi Zhuang Autonomous Region in 1958 may be presented as one example for reflection. It shows how the chosen option of “integration” as the basis for the establishment actually had the effect of making the Zhuang nationality, the largest minority group in China, a minority within its own autonomous region, while an alternative option could have made the Zhuang the majority in its autonomous region.<sup>114</sup>

The economic consequences of the numerous territorial changes that IMAR has undergone are still felt by the Oroqen Autonomous Banner.<sup>115</sup> OAB was incorporated into the province of Heilongjiang in 1969,<sup>116</sup> and returned to the IMAR in 1979, that was decided by the Central Committee of the CCP. However, the area returned to IMAR excluded two important forest areas, Jiagedaqui and Songling, which remained in Heilongjiang.<sup>117</sup> OAB has never received the full tax benefits from these two places that they were due to have after “losing” control over the forest areas to Heilongjiang Province.

In the administrative changes of the Naxi Autonomous Area in Lijiang in Yunnan Province into Yulong Naxi Autonomous County and Lijiang City, the economic and cultural basis for the autonomy was changed. Part of the traditionally inhabited area of the Naxi nationality, which is intrinsically linked to their history and culture, as well as highly economically profitable as a tourist attraction, was excluded from the new autonomous area of Yulong Naxi Autonomous County. In Lijiang City the Naxi do not exercise regional autonomy. On the surface, the process of urbanisation is the reason for the changes of the minority autonomous area. However, RNA as a basic legal system is not inevitably based on the countryside or the agricultural community; it would not be contrary to the purpose of the RNAL that RNA areas also included autonomous urban areas.

The RNA areas are established at three different administrative levels, *i.e.* at region (province), prefecture and county levels. As a result it is difficult to pursue the aims of RNA because of tensions between the local interests of the areas at different administrative levels and the interests of the groups exercising autonomy. The territories of the RNA areas are in reality very often overlapping. In the case of OAB in IMAR, the autonomous area of the Oroqens exists at the county level within the province level autonomous area of the Mongolians, the IMAR. An even more complicated situation is found in the case of the Xibe nationality exercising autonomy in the county (Chabu Xibe Autonomous County) within a

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<sup>114</sup> See Yong Zhou, ‘Legal Predicament of Combining “Regional” and “National” Autonomy: A Group Rights Perspective’, *16(3) International Journal of Minority and Group Rights* (2009)329–348, this issue.

<sup>115</sup> See Lundberg and Zhou, ‘Hunting-Prohibition’, *16 (3) International Journal of Minority and Group Rights* (2009), 349–397 this issue.

<sup>116</sup> See Document No.(1969)36 of the Central Committee of the CCP.

<sup>117</sup> See Document No.(1979)42 of the Central Committee of the CCP.

Kazakh autonomous prefecture (Ili Kazak Autonomous Prefecture) in Xinjiang Uyghur Autonomous Region. The lower level autonomies shall exercise their autonomy in the autonomous area of another minority nationality. The two essential autonomous powers of “law-making” and “alteration” exercised by the autonomous authorities are subject to the approval of the higher level organs according to the RNAL,<sup>118</sup> which in these cases are autonomous organs of other minority nationalities. This stipulated procedure of approval actually causes a procedural obstacle for the exercise of autonomy by the minority nationalities “as masters of their own areas”.

There have been many disputes in relation to the change of the territory of the RNA areas. To change the boundaries and to combine autonomous areas with other areas or alter the administrative status of an autonomous area are all changes that affect the very foundation upon which the system is established, its territory and its population. Based on previous practice, the RNAL articulates that if such changes are “really required”, they should be proposed by State organs at the next higher level after “full consultations” with the autonomous organs and approved according to “legal procedures”.<sup>119</sup> For RNA to follow the objective to make China a country governed by principles based on the notion of the rule of law and to serve its purpose to guarantee “the rights of the minority nationalities to administer their internal affairs” and “as masters of their own areas”,<sup>120</sup> this decision-making should follow clear and transparent procedures established in law in which due account can be taken of the rights and interests of the minority groups exercising RNA.<sup>121</sup> The national regional autonomous authorities and the people who exercise RNA should be guaranteed the right to express their opinions, be heard and have an influence on the decisions being made in order for their interests to be fully protected.

<sup>118</sup>) Articles 19 and 20 of the RNAL. Article 19 reads: “The regulations on the exercise of autonomy and separate regulations of autonomous regions shall be submitted to the Standing Committee of the National People’s Congress for approval before they go into effect. The regulations on the exercise of autonomy and separate regulations of autonomous prefectures and counties shall be submitted to the standing committees of the people’s congresses of provinces or autonomous regions directly under the Central Government for approval before they go into effect...”

<sup>119</sup>) Article 14 of the RNAL; Government White Paper 2005: *Regional Autonomy for Ethnic Minorities in China*, Information Office of the State Council of the People’s Republic of China, 28 February 2005, II.(2) *Establishment of Ethnic Autonomous Regions*, <[www.china-un.org/eng/zt/xzwt/t418939.htm](http://www.china-un.org/eng/zt/xzwt/t418939.htm)>.

<sup>120</sup>) Preface of the RNAL; Government White Paper: *National Minorities Policy and Its Practice in China*, Information Office of the State Council of the PRC, Beijing, June 2000, Ch. III. *Regional Autonomy for Ethnic Minorities*, para.1, <[www.china.org.cn/e-white/4/4.3.htm](http://www.china.org.cn/e-white/4/4.3.htm)>.

<sup>121</sup>) For different modes of entrenchment of autonomies see M. Suksi, ‘On the Entrenchment of Autonomy’, in M. Suksi (ed.), *Autonomy: Applications and Implications* (Kluwer Law International, The Hague/London/Boston, 1998) pp. 151–171, on the possible protection under international law and the right to self-determination, see pp. 164–168.

The determination of what would be “really required” should be made on the basis of whether the decision would have consequences that restrict the rights of the minority nationality exercising RNA. This determination should be made in a manner which fully involves and takes into account the opinions of the minority nationality in question. However, there is no clear legal procedure articulated by the RNAL for dispute resolution or remedies for minority nationalities or local autonomous authorities on these matters.

### 3.2. *The Group*

The group and the territory are the fundamental components that the RNA is built upon. RNA areas shall be established where the minority nationalities live in compact communities.<sup>122</sup> RNA should according to the RNAL guarantee “the right of the minority nationalities to administer their internal affairs...”. From this stated objective of the RNAL, it seems clear that the core aim of the institutional arrangement of RNA is to realise the right to autonomy by minority nationalities as groups. This combination clearly distinguishes the RNA from the territorial arrangement for Hong Kong and Macao, the Special Administrative Regions in China, which do not include such an ethnic group element. Thus, according to law, the subjects exercising RNA are minority nationality groups living concentrated in a specific area.<sup>123</sup>

Minority nationalities, *shaoshu minzu*, are considered to be distinct groups which are officially recognised as such by the State. The PRC has since 1949 recognised 55 minority nationalities, the last being the Jino nationality which was recognised in 1979.<sup>124</sup> To date, 44 out of 55 recognised minorities have their own autonomous area. Nationality (or ethnic) townships have been established for the 9 minorities among the 11 minorities not having their own autonomous area.

The ethnic identification and classification of nationalities reveal many problems in relation to the RNA. Since RNA is a kind of regional autonomy specially designed for the exercise of group rights, such as the freedom to develop and use their minority languages or to maintain and enjoy their culture or to exercise and manifest their religion,<sup>125</sup> the classification of the “group” becomes important for the adequate functioning of the system.<sup>126</sup> If the classification does not coincide with essential

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<sup>122</sup>) Preface and Article 2 of the RNAL; Government White Paper: *National Minorities Policy and Its Practice in China*, Information Office of the State Council of the PRC, Beijing, June 2000, Ch. III. *Regional Autonomy for Ethnic Minorities*, para.1, <[www.china.org.cn/e-white/4/4.3.htm](http://www.china.org.cn/e-white/4/4.3.htm)>.

<sup>123</sup>) Article 12 of the RNAL.

<sup>124</sup>) For an overview of the definition and identification of nationalities see C. Mackerras, *supra* note 10, pp. 140–145; D. Gladney, *Dislocating China. Muslims, Minorities and Other Subaltern Subjects* (University of Chicago Press, Chicago, 2004) pp. 9–14 on the politics of identification.

<sup>125</sup>) Articles 10 and 11 of the RNAL.

<sup>126</sup>) Articles 10 and 21 of the RNAL.

contents of the autonomy,<sup>127</sup> for example religious and linguistic characteristics of the groups, the possibilities to effectively exercise their autonomous rights as “masters” must be flawed. Only by looking at the sheer number of languages in China, estimated to be between 80 and 120 written or spoken languages,<sup>128</sup> we can see that it is hardly so that “linguistic minorities” overlap with the recognised minority nationalities, which have the potential of exercising their rights through the RNA system. Furthermore, it may be questioned whether religious minorities, such as the Hui having their autonomous province, the Ningxia Hui Autonomous Region, are actually served by having a territorially based autonomy, particularly when it is divided in 14 different administrative areas.<sup>129</sup> In respect of these kinds of cases, relating to linguistic or religious minorities, it seems reasonable that a non-territorial autonomy being representative for a particular group or group interest could possibly be an adequate alternative or be complementary to RNA.

About 800,000 persons are still considered to be non-recognised nationalities, but the work on ethnic identification is considered to be finalised by the authorities.<sup>130</sup> These persons belonging to non-recognised groups can neither act as “minority nationalities” having the potential of exercising autonomy nor have political rights to representation and participation in the autonomous organs.<sup>131</sup> Furthermore, we should be reminded that 11 of the 55 recognised minority nationalities do not have their own autonomous area. The 11 minority nationalities without RNA areas are the following: Achang, De’ang, Gaoshan, Gin, Hezhen, Jino, Lhoba, Monba, Russian, Tatar and Uzbek.

On the other hand, we can see that not even among the most populous minority groups the possibilities for having their own autonomous areas are clear. The Manchu, who reigned during the last dynasty, the Qing dynasty, for more than 250 years, and have a population of more than 10 million and a traditionally inhabited area in northeastern China, could not have an autonomous area before the 1980s. As a measure to “restore order from chaos” after the Cultural Revolution, the Manchu were granted 11 autonomous areas at the county level.

The concentration of the group in the autonomous area influences the effective exercise of RNA by the group. In the establishment of Guangxi Zhuang Autonomous Region in the 1950s, the chosen option of “integration” made the

<sup>127)</sup> Articles 10 and 11 of the RNAL.

<sup>128)</sup> The number of existing languages in China is not clear, but important scholars estimates it to more than 120, see Hongkai Sun, ‘Theorizing over 40 Years Personal Experiences with the Creation and Development of Minority Writing Systems of China’, in Minglang Zhou and Hongkai Sun (eds.), *Language Policy in the People’s Republic of China. Theory and Practice since 1949* (Kluwer Academic Publishers, Boston, Dordrecht, New York, London, 2004) p. 179.

<sup>129)</sup> However, in some cases the RNA may be useful for strengthening the ethnic identity, cf. K. Wellens, ‘Negotiable Rights? China’s Ethnic Minorities and the Right to Freedom of Religion’, *16(3) International Journal of Minority and Group Rights* (2009) 433–454, this issue.

<sup>130)</sup> C. Mackerras, *supra* note 10, p. 143.

<sup>131)</sup> Articles 16, 17 and 18 of the RNAL.



concentration of Zhuang far less than if the alternative was chosen.<sup>132</sup> In the case of the OAB in Inner Mongolia Autonomous Region, the Oroqens became a minority in the OAB, but in this case the demographic change took place through the large-scale immigration for the exploitation of the natural resources in the area. This State-initiated migration made the Oroqens, the former dominant majority in their own autonomous area, consisting of 99.48 per cent of the local population in 1951, decrease to a marginal minority group of 0.7 per cent of the local population in 1999.<sup>133</sup> In these cases the legitimacy for the group to act as a “master” of the area may be put into question. Furthermore, the actual possibility of the group having any effective influence on the decision-making is made more difficult since majority rule is applied.

The establishment of RNA areas relates to a defined territorial area and a certain administrative level according to the RNAL. The capacity of the minority nationality to act as a group in exercising autonomy depends to a large extent on the determination of the autonomous areas. The Tibetans, for example, exercise their RNA rights in 13 different areas. This includes one autonomous region at the administrative level of a province, in which the Tibetan population accounts for approximately half of the total Tibetan population in China, ten autonomous prefectures, in which Tibetans exercise the autonomous rights separately or jointly with other nationalities, and two autonomous counties. Under these kinds of circumstances, the group, in this case the Tibetans, are split in different areas and administrative levels so that it is difficult for them to deal with their own internal affairs in an adequate manner. Thus, despite the contiguous territory that the group inhabits, when the group is split among these different areas, their links are cut and they are seriously impeded in effectively carrying out RNA as a group.<sup>134</sup>

If we take the nine minority nationality groups with a population of more than five million respectively as examples, we find that except the Uyghurs who have only one autonomous area in Xinjiang, the Xinjiang Uyghur Autonomous Region, the other eight groups have the following RNA areas (the number within parenthesis (X) means joint RNA area)(Table 1):

According to the RNAL one or more of the minority nationalities in a particular autonomous area may be the subject of the autonomy.<sup>135</sup> The “nationality exercising regional autonomy” is the term used in the RNAL.<sup>136</sup> The name of the

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<sup>132</sup> See Yong Zhou, ‘Legal Predicament’, 16(3) *International Journal of Minority and Group Rights* (2009) 329–348, this issue.

<sup>133</sup> See Lundberg and Zhou, ‘Hunting-Prohibition’, Section 3, 16(3) *International Journal of Minority and Group Rights* (2009), 362, this issue.

<sup>134</sup> W. Connor, *The National Question in Marxist-Leninist Theory and Strategy* (Princeton University Press, Princeton, NJ, 1984), pp. 322–329, gives an historical account of gerrymandering and redistribution of population in China’s autonomous areas.

<sup>135</sup> Articles 12 and 13 of the RNAL.

<sup>136</sup> See e.g. Article 16 of the RNAL.

Table 1. One minority nationality with several RNA areas

<b>Ethnic group</b>	<b>Region</b>	<b>Prefecture</b>	<b>County</b>	<b>Total</b>
Mongol	1	2 + (1)	7 + (1)	12 (2)
Tibetan	1	8 + (2)	2	13 (2)
Manchu			10 + (1)	11 (1)
Hui	1	2	6 + (5)	14 (5)
Zhuang	1	(1)		2 (1)
Miao		(6)	3 + (17)	26 (23)
Tujia		(2)	3 + (4)	9 (6)
Yi		2 + (1)	8 + (11)	22 (12)

RNA area is composed of the name of the locality, the name(s) of the nationality exercising regional autonomy, and the administrative status. In addition to 43 combined autonomous areas including the names of the nationalities exercising regional autonomy, there are two without the name of nationalities, but only including the general term “multi-national”.<sup>137</sup> The two RNA areas without it being clear or specified which minority nationalities exercise regional autonomy are Longlin Multi-national Minorities Autonomous County and Longsheng Multi-national Minorities Autonomous County, both in Guangxi Zhuang Autonomous Region. Thus the autonomous areas shared by several nationalities account for 29 per cent out of the 155.

The following eight minority nationalities have no RNA area in which they exclusively exercise regional autonomy, but just jointly with other minority nationality groups (Table 2).

Since the autonomous area for minority nationalities is a kind of regional autonomy specially designed for the exercise of group rights, RNA areas for two

Table 2. Minority nationalities without their own autonomous areas, but jointly exercising autonomy with others

<b>Ethnic group</b>	<b>Prefecture</b>	<b>County</b>	<b>Total</b>
Derung		(1)	(1)
Bouyei	(2)	(3)	(5)
Jingpo	(1)		(1)
Gelao		(2)	(2)
Bonan		(1)	(1)
Nu		(1)	(1)
Pumi (Premi)		(1)	(1)
Blang		(1)	(1)

<sup>137</sup> Another multi-national autonomy area has been abolished, the Fancheng Multi-National Autonomous County.

or more nationalities would require specific rules on how they share the “subjectivity”, for example in relation to such matters as language and culture. Furthermore, the subject of autonomy in the so-called “multi-nationality” areas must be considered undetermined.

The RNAL does not include rules on how the exercise of RNA shall take place when more than one of the minority nationalities jointly practices autonomy. The general rule of equality among nationalities is included in the preface of the RNAL, and it contains a provision that discrimination shall be prohibited.<sup>138</sup> However, how the rules on the participation and representation of the minority nationalities exercising autonomy in the people’s congress and the people’s government shall be applied in the case of several minorities is not clarified by the law or by practice.<sup>139</sup> The RNAL simply refers to “nationality exercising regional autonomy” and “other nationalities”. The lack of a clear subject of this legal institution makes the right to autonomy as a group right a right which can never be exercised in pursuance with the stated purpose of the RNA. From law and practice we see that several factors influence the subject of RNA, including: State-recognition and classification of nationalities; population rate of the minority nationality; administrative border change; change of administrative status; representative organisation of each minority nationality as a group; types of autonomous organs.

### 3.3. *The Organs of Self-government*

The people’s congress and the people’s government of the RNA areas are the organs of self-government,<sup>140</sup> which are parts of the State power and administration.<sup>141</sup> There are no other forms of organs under the present framework of RNA to represent minority nationality groups for the exercise of their rights of autonomy.<sup>142</sup> The overriding question is whether and how the organs of self-government can be seen as legitimate and effective organs linking the exercise of rights of the minority nationality with the powers of autonomy in accordance with the stated aim of RNA.

The evolution of RNA shows that space existed for other forms of autonomous organs than the people’s congress and the people’s government. The 1952 Guidelines for Implementing the Regional National Autonomy regulated that the specific forms of the organs for self-government in autonomous areas shall depend on the will of the majority of the people and the leaders who have connection with the people.<sup>143</sup> At that time, Inner Mongolia and Tibet had their

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<sup>138)</sup> Preface, Articles 9, 48 and 50 of the RNAL; Article 4 of the Constitution of 1982.

<sup>139)</sup> Articles 16–18 of the RNAL.

<sup>140)</sup> Article 15 of the RNAL.

<sup>141)</sup> Article 3 of the RNAL.

<sup>142)</sup> Preface of the RNAL.

<sup>143)</sup> Article 14 of the 1952 Guidelines for Implementing the Regional National Autonomy.

different forms of governments. The administrative levels of the organs of self-government were also different, divided into autonomous township or village, autonomous district, autonomous county, large autonomous district and autonomy above large district level.<sup>144</sup> By the time of the adoption of the 1954 Constitution of the PRC, the administrative levels of the organs were unified into three, *i.e.* autonomous county, autonomous prefecture and autonomous region, while still allowing the majority of the minority nationality exercising regional autonomy to decide the forms of the organs.<sup>145</sup> The forms of the organs of self-government were not unified until the 1975 Constitution of the PRC.<sup>146</sup> In the following we will address three central issues of the organs of self-government: representation and the people's congress, participation in the people's government and the "ethnicalisation" of the organs of self-government.

The RNAL provides for the representation of minority nationalities in the people's congress in the autonomous areas. According to the RNAL, "in addition to" the representatives of the minority nationality exercising autonomy, the other minority nationalities in the RNA area should be entitled to "appropriate representation".<sup>147</sup> Each minority nationality living in a compact community should be represented at the people's congress of that locality by at least one representative.<sup>148</sup> The number and proportion of deputies from the different minority nationalities, the subject of the autonomy and the "other" nationalities shall be decided by the people's congress at a higher level, *i.e.*, national or province levels.<sup>149</sup>

Based on the ethnic composition of the population, the RNA areas in China can be divided into two kinds: one is that the population of the minority nationality exercising regional autonomy in a given RNA area comprises the majority of the population, while the Han nationality as the dominant group in the country, or other regional dominant ethnic groups, is demographically a minority group there. The other one is that the population of the minority nationality exercising regional autonomy in the given area has less population than the Han nationality or other regionally dominant ethnic groups living in that area. The existing situation is that the second kind of RNA areas is a majority of all RNA areas, and actually much more than the first kind of RNA areas. It is estimated that the RNA areas with a population of the nationality or nationalities jointly "exercising regional autonomy" being less than 50 per cent of the whole local population exceeds 70 per cent of all the RNA areas. Among the most important five RNA

<sup>144</sup>) Article 7 of the 1952 Guidelines for Implementing the Regional National Autonomy.

<sup>145</sup>) Article 67 of the 1954 Constitution.

<sup>146</sup>) Article 24 of the 1975 Constitution articulated that the people's congresses and the revolutionary committee are the organs of self-government in RNA areas.

<sup>147</sup>) Article 16 of the RNAL.

<sup>148</sup>) Articles 18 and 19 of the Electoral Law of the National People's Congress and Local People's Congresses of the People's Republic of China (1979, as amended 2004) (Electoral Law).

<sup>149</sup>) Article 16 of the RNAL; Article 10 of the Electoral Law.

areas at the provincial level, the autonomous regions of Mongolian, Tibetan, Uyghur, Hui and Zhuang nationalities, it is solely the Tibetan Autonomous Region where the Tibetan population, the nationality exercising regional autonomy, is the majority in that area. Thus, in the majority of all autonomous areas the minority exercising regional autonomy cannot be decisive in the exercise of autonomous powers by the people's congress since a majority vote is required.<sup>150</sup>

However, also when taking the example of the OAB in IMAR where the rate of the Oroqen population has decreased considerably, we see that the People's Congress cannot be said to legitimately represent the nationality exercising regional autonomy. In the People's Congress of the OAB the number of Oroqen deputies has been rather stable, with the first years around 60 per cent and then dropping to around 30 per cent of the deputies. Comparing these numbers with the change in the proportion of the population of the Oroqens, it is difficult to see how they relate to each other. In 1999, the population of the whole Banner amounted to 316,969, of which the Oroqens, "the nationality exercising regional autonomy" in the Banner, only numbered 2,221, accounting for 0.7 per cent of the total population, compared to being 99.5 per cent in 1951 at the time of the establishment of the Banner.<sup>151</sup> This considerable change in the composition of the population is not reflected in the proportion of deputies.

According to the Electoral Law, there are certain rules for readjusting the number of people being represented by each deputy. When the total population of a minority group living in a compact community represents less than 15 per cent of the total population in a locality, the number of inhabitants represented by each deputy from the minority group may be less, but not less than half that represented by other deputies to the local people's congress.<sup>152</sup> This seems hardly to be the case in the OAB, even if the total number of deputies has been re-determined.<sup>153</sup> Actually, the Oroqens are overrepresented in the people's congress, but at the same time they are not in the position of being able to determine the affairs brought up in the people's congress.<sup>154</sup>

We must ask ourselves, how should the functions of representation be understood and expressed in the local practice when the proportion of the population of the nationality exercising the regional autonomy has changed so drastically?

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<sup>150</sup> Article 20 of the Organic Law of the Local People's Congress and the Local People's Government (1979, last amended in 2004).

<sup>151</sup> *Oroqen Zizhiqi Zhi: 1989–1999* [Chronicle of the Oroqen Autonomous Banner: 1989–1999] (Inner Mongolia People's Publishing House, Hohhot, 2001) p. 85. See Lundberg and Zhou, 'Hunting-Prohibition', Section 3, 16(3) *International Journal of Minority and Group Rights* (2009) 362, this issue.

<sup>152</sup> Article 18 of the Electoral Law.

<sup>153</sup> Article 11 of the Electoral Law provides that the number may be re-determined if the size of the population has changed considerably.

<sup>154</sup> A majority of the votes are required, see *supra* n. 150.

Could mechanisms be provided which actually guarantee the Oroqens the powers “to administer their internal affairs”?<sup>155</sup>

There are measures to take especially to guarantee that the interests of the nationality or nationalities exercising regional autonomy can be effectively expressed and taken into account even where the nationality or nationalities “exercising regional autonomy” are in minority position. These measures could, for instance, include the establishment of a public body, a “lawful parliament”, for the specific minority nationality which could legitimately formulate and represent their group interests, or to empower the deputies from that specific group or groups to have exclusive rights to present proposals and to have necessary veto power in the local people’s congress in relation to those affairs or decisions which may influence the identity of their groups. Without adding this kind of special measures the possibilities for the autonomous organs to represent the minority nationality seems non-existent within the present structure of the RNA.<sup>156</sup>

The second important aspect of the organs of self-government is that the head of the people’s government of a RNA area shall be a person from the nationality exercising regional autonomy nationality.<sup>157</sup> This rule, included in Article 17 of the RNAL, generates a clear “order” which has been followed in practice,<sup>158</sup> but there are a number of key aspects of the power structure that need to be highlighted for understanding the real function and process of RNA in the Chinese Party-state. Statistics on the five main RNA areas (*i.e.* Tibet, Inner Mongolia, Ningxia, Xinjiang and Guangxi) at the provincial level in China give the picture as shown in Table 3.

Three elements need to be highlighted to explain the participation of the nationality exercising regional autonomy that is provided for in the RNAL in the context of the Party-state structure of the PRC. Firstly, there is an ethnic aspect of the participation. Despite the fact that all the five RNA regions have a member of the specified minority nationality group acting as the governor of the regional autonomous government, all the persons acting as the highest authority of the CCP – the Party Secretaries – belong to the ethnic majority, the Han Chinese. Having a Han Chinese in the position of the top CCP leader in all the five autonomous regions expresses a strong symbolic order of the dominance of the Han ethnicity in the Party-state.

<sup>155</sup> Preface of the RNAL.

<sup>156</sup> See *supra* the territorial and group elements. See Zhou, ‘Legal Predicament’, 16(3) *International Journal of Minority and Group Rights* (2009) 329–348, this issue.

<sup>157</sup> Article 17 of the RNAL: “The chairman of an autonomous region, the prefect of an autonomous prefecture or the head of an autonomous county shall be citizens of the nationality exercising regional autonomy in the area concerned. Other posts ...”

<sup>158</sup> There are five RNA regions, 30 RNA prefectures and 120 RNA counties in China. This rule is applied strictly with only a few exceptions in the history or in joint autonomous areas where no rule exists on the division of positions among the nationalities.

Table 3. Practice of Article 17 of the RNAL

	<b>Name, Nationality &amp; Position</b>	<b>Status in the Organs of the Chinese Communist Party (CCP) &amp; State</b>
Inner Mongolia Autonomous Region (IMAR)	B. Chu, Han, Secretary of the CCP Committee of IMAR J. Yang, Mongol, Chairman of IMAR	Member of Central Committee of CCP; Chairman of Standing Committee of IMAR People's Congress; Representative of National People's Congress (NPC) Vice CCP Secretary of IMAR; Member of Central Committee of CCP; Representative of NPC
Tibet Autonomous Region (TAR)	Q. L. Zhang, Han, Secretary of CCP Committee of TAR Xiangba, Tibetan, Chairman of TAR	Member of Central Committee of CCP; Representative of NPC Vice CCP Secretary of TAR; Member of Central Committee of CCP; Representative of NPC
Xingjiang Uygur Autonomous Region (XJUAR)	L.Q. Wang, Han, Secretary of CCP Committee of XJUAR Simayi, Uygur, Chairman of XJUAR	Member of Political Bureau of Central Committee of CCP Representative of NPC Vice CCP Secretary of XJUAR; Alternate Member of Central Committee of CCP; Representative of NPC
Ningxia Hui Autonomous Region (NXHAR)	JG, Chen, Han, Secretary of the CCP Committee of NXHAR Z.W. Wang, Hui, Chairman of NXHAR	Member of Central Committee of CCP; Chairman of Standing Committee of NXHAR People's Congress Representative of NPC Vice CCP Secretary of NXHAR; Member of Central Committee of CCP; Representative of NPC
Guangxi Zhuang Autonomous Region (GXZAR)	S.K. Guo, Han, Secretary of the CCP Committee of GXZAR B. Lu, Zhuang, Chairman of GXZAR	Alternate Member of Central Committee of CCP; Chairman of Standing Committee of GXZAR People's Congress Representative of NPC Vice CCP Secretary of GXZAR Representative of NPC

Secondly, there is an overlapping “organisational” (or structural) aspect of the participation: 1) Among five RNA regions, most of the Party Secretaries at the same time hold the position as the Chairman of the local people's congress, one of the autonomous organs in the areas; 2) All the Party Secretaries are representatives of the National People's Congress; 3) All the Governors of the regions are Vice Party Secretaries in their regions. These overlapping organisational structures are intentionally designed for strengthening the Party's supremacy in the autonomous

organs in the regions, and to control the local and minority group interests at the central level.

Thirdly, there is a “personal” element of RNA. In order to be selected as the head of one of the organs of self-government, as the “symbolic representative” of the ethnic group, the person must be a member of the CCP. Through all the internal selection and nomination procedures by the Party’s organisational departments, he or she must be a trusted “Party man/woman”, and religious beliefs are not accepted.<sup>159</sup> She or he should also hold the position as Vice Party Secretary of the autonomous region and be a member (or alternate member) of the CCP’s Central Committee. As a Party member, she or he must give the highest priority to Party instructions and interests, and is subject to the Party discipline.

These three elements illustrates how the content of the law, in this case the participation of the nationality exercising regional autonomy at the highest level of government, should be looked upon in the context of the CCP’s dominant role in the rule-making and implementing process of RNA. Through this lens, we can see that it is highly doubtful that the head of the government can participate “effectively” as a representative of the group linking the exercise of rights of the minority nationality with the powers of autonomy in accordance with the stated aim of RNA.<sup>160</sup>

The Chinese approach to the relationship between the rights of the minority nationalities and the autonomous powers has given priority to the “ethnicalisation”, *minzu hua*, of the autonomous organs in order to guarantee the ethnic element of regional national autonomy. The main thrust is on promoting the participation of minority cadres and the minority language use by special measures. Minority languages should be used in the autonomous areas by the organs of self-government, and great numbers of minority cadres should be recruited for work in the autonomous organs and elsewhere.<sup>161</sup> In this way, the minority nationalities would become “masters” of their own affairs in their autonomous areas according to the Chinese leaders.<sup>162</sup>

The RNAL provides for the participation of the nationality exercising autonomy in positions at the highest level of the people’s congress, and as the head of the autonomous government.<sup>163</sup> Other posts in the government shall “rationally

<sup>159)</sup> Cf. the possibilities for lower level cadres described by K. Wellens, 16(3) *International Journal of Minority and Group Rights* (2009) 433–454, this issue.

<sup>160)</sup> Cf. in the Oroqen case of the prohibition of hunting, the head of the autonomous banner had a central role in the procedure used which avoided taking the decision to the local people’s congress, Lundberg and Zhou, ‘Hunting-Prohibition’, 16(3) *International Journal of Minority and Group Rights* (2009) 349–397, this issue.

<sup>161)</sup> Articles 17, 18, 21 and 22 of the RNAL.

<sup>162)</sup> *Wulanfu Lun Minzu Gongzuo* [Wulanfu on Nationality Work] (CCP Party History Publishing House, Beijing, 1997) p. 265. See Zhou, 16(3) *International Journal of Minority and Group Rights* (2009) 329–348, this issue. On minority cadres policy in relation to governance, see Potter, *supra* note 7, pp. 317–320.

<sup>163)</sup> Articles 16 and 17 of the RNAL.



be assumed” by this minority nationality and other nationalities in the area.<sup>164</sup> Moreover, according to current law and regulations, in nationality or ethnic townships, the civil servants should be recruited from the nationalities in the township, and the leader of the nationality township must come from the minority which the nationality township is based on.<sup>165</sup>

It is useful to take the Guangxi Zhuang Autonomous Region as an historic example of the central importance of the proportion of minority cadres to the leadership of the PRC. The chosen proposal for “integration” left the Zhuang minority nationality in a minority position in their autonomous region to the advantage of the Han nationality, the dominant group. Zhou Enlai instructed that proper arrangements should be made for the personnel of various nationalities in the administration and legislature of the autonomous region. He said:

Since this is the Zhuang Autonomous Region, the administrative leader should be the Zhuang in origin. And on account of the fact that the Han people constitute the majority in population, the proportion of the Han deputies to the People’s Congress should keep agreement with the proportion of their population. And it can be deliberated that the chairman of the Standing Committee of the People’s Congress can be a Han. This will be suitable to the actual conditions and will help play a function of mutual restriction.<sup>166</sup>

Li Wei-han had the following to say:

In terms of the proportion of various nationalities in Guangxi, the Region’s organs of self-government also have a character of coalition government. ... The cadres of the Han, Zhuang and other minority nationalities should all have a certain, necessary status. ... In accordance with the present law on election, the constitution of the deputies to the Region’s People’s Congress should be based on the proportion of the population, but a proper favor can be given to the minority nationalities.... Because of the larger proportion of the Han people in the total population, the percentage of their deputies will certainly be larger... The percentage of the Zhuang personnel ... in the members of the Region’s People’s Commission as well as in the offices at the level of department under the Region government ... can be around or little

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<sup>164</sup> Article 17 of the RNAL. In the 1984 RNAL the wording “whenever possible” was used. The change to “rationally chosen” in the amendments adopted in 2001 have weakened the standard for representation.

<sup>165</sup> See G. Leijonhufvud, ‘Nationality Townships – An Endangered Species?’, Section 2.1, *Comparing Nationality Townships and Ordinary Townships*, 16(3) *International Journal of Minority and Group Rights* (2009) p. 458, this issue. See *Guowuyuan guanyu jianli minzu xiang wenti de tongzhi* [State Council Circular on the Question of Establishing Nationality Townships], 29 December 1983; *Minzu xiang xingzheng gongzuo tiaoli* [Regulations on Administrative Work in Nationality Townships], adopted by the State Council on 29 August 1993, issued and implemented by the State Nationality Commission.

<sup>166</sup> Zhou Enlai, ‘Minzu Quyu Zizhi Youyiyu Minzu Tuanjie he Gongtong Jinbu’ [The Regional National Autonomy will Benefit the Unity between Nationalities and Their Common Progress], in *Zhongguo Congchandang Zhuyao Lingdaosen Lun Minzu Wenti* [Major Leaders of the Chinese Communist Party on the Nationality Problem], (Minzu Publishing House, Beijing, 1994) p. 155.

less than fifty percent. As for the government officers of other nationalities, no percentage should be fixed...<sup>167</sup>

Their opinions turned out to be the foundation for policy and guiding thoughts in the establishment of RNA areas, not only in Guangxi, but in the PRC as a whole. The proportion of minority cadres was and is a central issue for the legitimacy and the perceived proper functions of RNA. In the RNAL it is stipulated that in general the cadres in the autonomous organs shall “rationally” be chosen from the nationality exercising regional autonomy, while the 1984 law stated that they should be chosen “whenever possible”.<sup>168</sup> These amendments seem actually to weaken the legal basis for the participation both in respect of positions assumed and the numbers of minority persons working as cadres in the autonomous organs.<sup>169</sup>

It is clear from a reading of the RNAL, not providing any particular rules for the internal or group affairs, that RNA is aimed at the participation in the local affairs by minority nationalities. The participation is based on the individual persons belonging to the group, as individuals instead of as groups. In this framework, much attention is paid to the proportion of various nationalities in government, but it is neglected whether or not the officials of minority nationalities can represent the interests of the ethnic group to which they belong.

During our fieldwork, we have heard time after time that one of the main expectations of the minority group exercising autonomy is that it will be holding important offices and have many persons working in the government. The importance and symbolic value of being represented at the highest levels of decision-making and the actual participation in the work of the organs of self-government should not be underestimated. It may give windows of opportunity for the local cadres to play a role in promoting their own particular culture or religion.<sup>170</sup> Nevertheless, it should not be overlooked that, taking into account CCP membership, training and discipline, in practice the minority cadres’ work has double facets, including the promotion of central and local policy interests.<sup>171</sup>

<sup>167</sup> Li Weihai, ‘Ganyu Jianli Zhuangzu Zizhiqiu Wenti de Yixie Kanfa he Yijian’ [Some Comments on the Establishment of the Zhuang Autonomous Region], in *Tongyi Zhanxian Wenti yu Minzu Wenti* [The Untied Front Problem and the Nationality Problem (Renmin Publishing House, Beijing, 1981), p. 500.

<sup>168</sup> Articles 17 and 18 of the RNAL. Article 17 addresses positions in government and Article 18 the composition of the cadres in the organs of self-government.

<sup>169</sup> However, at the level of “working staff” the autonomous organs shall give “appropriate consideration to people of the nationality exercising regional autonomy”, according to a new paragraph inserted in Article 22 of the RNAL in 2001 which seems to strengthen their representation.

<sup>170</sup> See K. Wellens, ‘Negotiable Rights?’, Section 4, 16(3) *International Journal of Minority and Group Rights* (2009) p. 445, this issue.

<sup>171</sup> Cf. the view that in practice the minority cadres work mainly for implementing the “central interests” and not as designers of local policy due to training and loyalty to CCP supremacy, Potter, *supra* note 7, pp. 317–320.

The other tenet of the “ethnicalisation” of the autonomous organs is the promotion of minority language use. The RNAL provides in accordance with the constitutional principle that the organs of self-government “shall guarantee the freedom of the nationalities in these areas to use and develop their own spoken and written languages”.<sup>172</sup> In line with this obligation, the autonomous organs have the powers to promote the use of minority languages in education, and to publish minority language literature and to promote radio, television and films.<sup>173</sup> Furthermore, broadly speaking, they shall help the nationalities to develop their educational, scientific and cultural affairs.<sup>174</sup>

The organs of self-government shall use one or several of the languages commonly used in the autonomous area while performing their functions.<sup>175</sup> This may include one or several of the minority languages, including the language of the nationality exercising autonomy. The law also provides that cadres should learn each others languages and awards should be given to those cadres capable of using several languages.<sup>176</sup> Rules providing for the use of minority languages in public organs, apart from their symbolic value relating to the governance of the area to a certain linguistic group, may result in the hiring of more cadres from the minority nationalities and increasing the participation of the minority nationality in the governance of the autonomous areas. In practice, a complex linguistic situation where possibly several languages are used may result in that the majority language, “Han Chinese”, is used as the *lingua franca* within the authorities. Many of the minority cadres being employed in the government may have a lesser command of the minority language for professional purposes, having had their higher education and their professional exams in the majority language. The rules for minority language use by the self-governing authorities do not specify which languages that shall be used for communication with higher and central authorities. In communicating with the central authorities the use of Han Chinese is expected in practice, which makes the officials in autonomous regions expected to use this language at least in part of their activities.

The adoption of the Law on the Standard Spoken and Written Chinese Language in 2000 has change the context of the rules of the RNA. The aim of this law is to promote the use of standard “Han” Chinese, which creates tensions with respect to the idea of “ethnicalisation” of the autonomous organs and the aim of the RNAL. Following the adoption of this law, the RNAL was amended in respect of minority education. The introduction of Han Chinese in minority language

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<sup>172)</sup> Article 10 of the RNAL; Article 4 of the 1982 Constitution.

<sup>173)</sup> Articles 37 and 38 of the RNAL.

<sup>174)</sup> Article 50 of the RNAL.

<sup>175)</sup> Article 21 of the RNAL.

<sup>176)</sup> Article 49 of the RNAL.

schools can now start at the junior grades of primary school.<sup>177</sup> Formally, Article 8 of the new law on “Han language” provides that the use of minority languages should be in line with provisions of the Constitution, the autonomy law and other related provisions of laws. However, the influence of principles, such as democratic centralism, and procedural rules requiring the review and approval of the exercise of autonomous powers make the legal and political possibilities for the autonomous organs to exercise autonomy in this field limited if not scarce.<sup>178</sup>

### 3.4. *The Autonomous Powers*

The powers of autonomy reveal core characteristics of the system of RNA. According to the RNAL, the powers of the organs of self-government are part of the State power.<sup>179</sup> The autonomous organs, the local people’s congress and the local people’s government have law-making and decision-making powers to reflect local circumstances and the characteristics of the minority nationalities.

The organs of self-government at the province, prefecture and county levels shall act both as local organs of the State and as autonomous organs.<sup>180</sup> As State organs, they shall act according to the principle of “democratic centralism”.<sup>181</sup> This principle has its origins in the Marxist-Leninist approach to the Party organisation in that it “strives to proceed from the top downward, and upholds an extension of the rights and powers of the centre in relation to the parts”.<sup>182</sup> The relationship to the central authorities is expressed in Article 7 of the RNAL which states that

[t]he organs of self-government of national autonomous areas shall place the interests of the State as a whole above anything else and make positive efforts to fulfill the tasks assigned by State organs at the higher levels.

In light of these provisions, the institutional design is of utmost importance for understanding the extent of the autonomous powers of the organs of

<sup>177</sup>) Article 37 of the RNAL (as amended in 2001) provides that “[c]lasses for the teaching of Chinese (the Han language) shall, where possible, be opened for *junior or* senior grades of primary schools...” (emphasis added).

<sup>178</sup>) See M. Lundberg, ‘Regional National Autonomy and Minority Language Rights in the PRC’, 16(3) *International Journal of Minority and Group Rights* (2009) 399–422, this issue.

<sup>179</sup>) Article 3 of the RNAL.

<sup>180</sup>) Article 4 of the RNAL.

<sup>181</sup>) See Article 3 of the RNA; Constitution of the Communist Party of China, Chapter II: *The Party’s Organizational System*, <[news.xinhuanet.com/english/2007-10/25/content\\_6944738\\_2.htm](http://news.xinhuanet.com/english/2007-10/25/content_6944738_2.htm)>.

<sup>182</sup>) Citation in W. Connor, *The National Question in Marxist-Leninist Theory and Strategy* (Princeton University Press, Princeton, 1984) p. 35 (from *One Step Forward, Two Steps Back* (1904), Lenin, *Selected Works*, 3 vols. (Progress Publishers, Moscow, 1975) Vol. I: p. 398).

self-government. From the outset their competence to act seems limited by the fact that it derives from the central authorities.

Under Article 19 of RNAL the people's congresses in RNA areas are granted legislative powers to enact "regulations on the exercise of autonomy" (autonomous regulation), *zizhi tiaoli*, and "separate regulations", *danxing tiaoli*, in accordance with the "political, economic and cultural characteristics of the nationality or nationalities in the areas concerned".<sup>183</sup> This legislative power makes the congresses of RNA areas gain special status in comparison with other non-autonomous areas. Drafting autonomous regulations or separate regulations is a special autonomous power, which provides the specific legal basis for the self-government authorities to exercise regional and national autonomy.<sup>184</sup> To date, 135 out of China's 155 autonomous areas have adopted autonomous regulations, and there are more than 400 special regulations adopted by the local people's congresses in the autonomous areas. However, none of these are adopted by the provincial level autonomous organs.

These special or autonomous regulations shall prevail over national laws in the area they apply. If they alter national law, they shall prevail provided that they do not violate the basic principles of such laws, and the Constitution, the RNAL and provisions of any other law or administrative regulation addressing ethnic matters concerning ethnic autonomous areas.<sup>185</sup>

However, in order for the autonomous or special regulations to enter into force they have to be "reviewed and approved" by the people's congress at the national or provincial levels,<sup>186</sup> and there are not any set procedures or criteria for such "approvals". This procedural limitation has made this power seen as "half legislative power" by the local people in the autonomous areas. Nevertheless, it remains that it is a right to initiate and draft autonomous and special regulations.<sup>187</sup>

The most important aspect of separation of powers between the central and local government is the provincial level. It is significant that at present there are no autonomous regulations adopted among the five RNA areas at this level,

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<sup>183</sup>) Article 19 of the RNAL. These special and autonomous decrees have to be approved by the Standing Committee of the National People's Congress, or if adopted at the county or prefecture level the people's congress at the provincial, autonomous region or municipality directly under the central government, *see also* Article 66 of the Legislation Law (2000), Article 116 of the 1982 Constitution.

<sup>184</sup>) Article 15 of the RNAL.

<sup>185</sup>) Articles 66.2 and 81 of the Legislation Law (2000).

<sup>186</sup>) Article 19 of the RNAL; Article 66 of the Legislation Law (2000). The special and autonomous regulations have to be approved by the Standing Committee of the National People's Congress, or if adopted at the county or prefecture level the people's congress at the provincial, autonomous region or municipality directly under the central government.

<sup>187</sup>) *Cf.* the reasoning that it may be an advantage to have the higher organs "approving" for reasons relating to implementation, Zhang Xisheng, 'Written Language Reform and Regional Autonomy of Dai Nationality in Xishuangbanna', 16(3) *International Journal of Minority and Group Rights* (2009) 423–432, this issue.

*i.e.* Inner Mongolia Autonomous Region, Guangxi Zhuang Autonomous Region, Ningxia Hui Autonomous Region, Xinjiang Uyghur Autonomous Region and Tibet Autonomous Region.<sup>188</sup> This entails that one of the most important legal basis to specify “the organisation and work of the organs of self-government of national autonomous areas”<sup>189</sup> in the provincial level is absent. Thus, in the Chinese context the assumption is that the powers remain with the central authorities.

In practice, much effort has been done by the RNA areas to draft autonomous regulations, taking Guangxi Zhuang Autonomous Region (GZAR) as an example: The drafting of the Autonomous Regulation (AR) of GZAR was started in 1957 during the preparation for establishing the Autonomous Region. A draft of the AR including six chapters and 69 articles was reported and discussed in the first session of the People’s Congress of GZAR in 1958. However, further discussion and revision on this draft was interrupted due to the “against the rightist” movement, because those who insisted on autonomy were considered to be “local nationalists or rightists” who were against the CCP’s leadership.

In 1980, the drafting work restarted. In 1987, the 13th draft of AR was presented of the Central Committee of CCP by the CCP Committee in GZAR. The draft was then transferred with the instruction by the Central Committee of CCP to the Ethnic Committee of the NPC to deal with this draft by consulting various ministries under the State Council. The draft was then rejected and sent back for further revision by referring to the gap between the central government and GZAR on the contents of autonomous power in relation to finance, foreign trade, profit sharing of the State-owned enterprises under the central government, etc. The AR draft was again revised several times and presented in its 18th version to the Central Committee of CCP at the end of 1990 by the CCP Committee in GZAR. It was rejected once again and sent back for further revisions. The 19th version is now tabled in GZAR.

It is crucial to observe that the drafting work is considered so important that it is organised under the leadership of the local CCP Committee. The draft also was formally presented several times to the Central Authority of CCP instead of to the NPC’s Standing Committee. In fact, the draft has never been directly presented by the Guangxi Local People’s Congress to the Standing Committee of NPC, which would have been in accordance with the legal procedure articulated in the RNAL. This reveals an essential aspect of the power structure of the

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<sup>188)</sup> Article 19 of the RNAL provides that the autonomous areas shall adopt “regulations on *the exercise of autonomy and separate regulations* in light of the political, economic and cultural *characteristics of the nationality or nationalities in the area concerned*” (emphasis added). Provinces with regional national autonomous areas under them have adopted local regulations on the exercise of autonomy, see Ao Junde, *supra* note 35; CERD Concluding observation, UN Doc. CERD/C/30/4/Add. 15, 27 September 1996, para. 25.

<sup>189)</sup> Article 15 of the RNAL.

Party-state and its *working procedure* (to be distinguished from a legal procedure) in practice. In this institutional normative order, all the people's congresses' work (planning and drafting) in relation to "important political and economic legislations" must first be approved by the CCP authorities. The new rule in practice which is in line with the CCP's strategy is that the Party Secretary of CCP should serve as the Chairman of the people's congress in local areas to strengthen the Party's control of the work of people's congresses and legislation.

In Xinjiang Uyghur Autonomous Region, there are a total of 12 RNA areas, including one region, five prefectures and six counties. None of them has adopted their autonomous regulations. This example discloses the unbalanced practice of RNA in China and the particular tensions surrounding the exercise of "autonomy", in this case relating to the separation movement in this region. Taking into account that there are 135 autonomous regulations adopted among the 155 RNA areas, and that none of the five RNA regions can benefit from having their autonomous regulations because of the above stated difficulties, it is significant that the majority of the RNA areas lacking autonomous regulations are in Xinjiang. Our assumption is that the central authorities view the exercise of RNA in these sensitive cases as a first step leading to secession.

From the perspective of RNA, this situation implies that there is no clear determination of the division of powers between the central and local authorities in autonomous affairs. When no autonomous regulation exists, there is no legal basis for the local autonomous authorities to defend their autonomy especially in view of the stipulation in the RNAL that "[t]he people's governments of all national autonomous areas shall be administrative organs of the State under the unified leadership of the State Council and shall be subordinate to it".<sup>190</sup>

The autonomous powers include the right to make alterations (alteration power) to higher level organs' resolutions, decisions, orders or instructions, if they do "not suit the conditions in the area".<sup>191</sup>

The direct origin of this new rule of RNA included in the 1984 RNAL is based on the Notice of Memorandum of the Meeting on Tibet Affairs by the Central Committee of the CCP in 1980. It is said that leadership organs of party and government in Tibet can cease the implementation or make alterations to those policies or instructions made by the central authorities that do not suit the conditions in Tibet. Although a significant number of different alterations have been made, the scope of this power of the autonomous organs is limited in the same

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<sup>190)</sup> Article 15 of the RNAL.

<sup>191)</sup> Article 20 of the RNAL provides: "If a resolution, decision, order or instruction of a State organ at a higher level does not suit the conditions in a national autonomous area, the organs of self-government of the area may either implement it with certain alterations or cease implementing it after reporting to and receiving approval of the State organ at a higher level; the said organ shall give a reply within 60 days of the date of the receipt of the report."

way as the legislative powers.<sup>192</sup> This Notice indicates that this rule shall be applied to other RNA areas in China.

The autonomous authorities need to report and receive an approval by the State organ at the higher level if they wish to make an alteration or to cease to implement higher level resolutions, etc. The functioning of this rule was strengthened in the 2001 revisions of the RNAL, by adding that the higher level organs need to give their reply within 60 days.<sup>193</sup>

The RNAL roughly outlines the scope of powers of autonomy in relation to a wide number of fields, such as: language use; recruitment of cadres; recruitment of personnel for enterprises, organisation of public security forces; definition of ownership and right to usage of forests and grassland; administration and planning of economic development; management and exploitation of natural resources; foreign trade; local finances and taxation; education, including education for minority nationalities; cultural undertakings; healthcare; sports; foreign exchanges; population and family planning; and ecological and environmental protection and conservation.<sup>194</sup> The text of the law most often qualifies the powers in these fields by phrases like “in accordance with legal stipulations” or “in accordance with unified State plans”. If we consider these qualified powers as ‘shared’ powers between the autonomous local authorities and the central authorities, the powers seem to coalesce towards the central authorities.

These fields generally relate to both ‘local’ and ‘minority specific concerns’ which are relevant to the governance of the autonomous areas. However, the importance of the “ethnicalisation”, *minzu hua*, of RNA emphasising the promotion of minority language and minority cadres<sup>195</sup> transfuses the powers of autonomy. The provisions on language use, prioritisation of recruitment of minority cadres and the education for the minority nationalities are, judging from the wording of the RNAL, within the exclusive powers of autonomy of the organs of self-government.<sup>196</sup> However, when compared to practice and to developments following the laws relating to the promotion of the “national commonly used language” and compulsory education, *i.e.* the Law on the Standard Spoken and Written Chinese Language (2000) and the revised Compulsory Education Law

<sup>192</sup> Four areas cannot be subject to alterations, *i.e.* do not violate the basic principles of such laws, and the Constitution, the RNAL, and provisions of any other law or administrative regulation addressing ethnic matters concerning ethnic autonomous areas, Articles 66.2 and 81 of the Legislation Law (2000).

<sup>193</sup> Article 20 of the RNAL. However, there is no indication of remedies if this is not done.

<sup>194</sup> See Articles 21–45 of the RNAL.

<sup>195</sup> *Wulanfu Lun Minzu Gongzuo* [Wulanfu on Nationality Work] (CCP Party History Publishing House, Beijing, 1997) p. 265.

<sup>196</sup> See Articles 17, 18, 21 and 22 of the RNAL. On the practice of autonomy in relation to language, see Zhang, 16(3) *International Journal of Minority and Group Rights* (2009) 423–432, this issue. On linguistic rights and RNA, see Lundberg, 16(3) *International Journal of Minority and Group Rights* (2009) 399–422, this issue.



(2006), the autonomous powers in relation to the strengthening of minority language use under the RNAL seem in practice actually to be eroding.<sup>197</sup> Considering that the law clearly states that the autonomous organs shall guarantee the minority nationalities the freedom to use and develop their own spoken and written languages, the freedom to preserve or reform their own folkways and customs, and the freedom of religious belief and activities,<sup>198</sup> the powers of the autonomous organs are not on a par with what the law set out to guarantee.

Returning to the stated aim of RNA, which emphasises the “guarantee of the right of the minority nationalities to administer their internal affairs and its adherence to the principle of equality, unity and common prosperity for all the nationalities”, however, the notion of internal affairs is not defined in the RNAL or other laws. In our opinion, these elements, *i.e.* language, folkways and religion, would be core elements in what could be determined to be “internal affairs” of the minority nationalities exercising RNA.

Nationality or ethnic townships do not exercise RNA, but have certain limited powers. They can develop their economic, cultural, educational and hygiene affairs according to their special situation and the characteristics of the nationality, and they have some preferred fiscal and financial treatment which is not otherwise offered to the township. However, in practice it seems that the nationality township does not improve the political and economic status of minorities, or their consciousness of self-determination.<sup>199</sup> The function of the nationality or ethnic township in promoting related nationalities to participate in local affairs and State affairs effectively is very limited. Beside some limited favourable aids, it is difficult to see the difference between the ethnic township and the normal township.

### 3.5. *Autonomy with “Chinese Characteristics”*

The establishment and practice of RNA is part of the Chinese State-making process. RNA was a promise of the CCP from negotiations with certain minority nationalities, such as the Mongols and Tibetans, to maintain their group identities

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<sup>197</sup> On the problems of the institutional design of RNA, see Zhou, 16(3) *International Journal of Minority and Group Rights* (2009) 329–348, this issue. See also Lundberg, 16(3) *International Journal of Minority and Group Rights* (2009) 399–422, this issue.

<sup>198</sup> Articles 10 and 11 of the RNAL. The law takes an individualistic approach to the freedom of religious belief, while the linguistic and cultural rights are expressed as group rights. On language, see Lundberg, *ibid.*, and Zhang, 16(3) *International Journal of Minority and Group Rights* (2009) 423–432, this issue. On the freedom to preserve folkways and custom, see Lundberg and Zhou, ‘Hunting-Prohibition’, 16(3) *International Journal of Minority and Group Rights* (2009) 349–397, this issue. On freedom of religion, see K. Wellens, 16(3) *International Journal of Minority and Group Rights* (2009) 433–454, this issue.

<sup>199</sup> See G. Leijonhufvud, 16(3) *International Journal of Minority and Group Rights* (2009) 455–473, this issue.

and deal with their internal affairs in their homelands while staying within the territorial borders of the PRC. RNA was a distinctive choice of the CCP in 1949 for the organisation of the polity of PRC as a unitary State instead of the federation at a time when the Soviet model was dominant in most of the political, social and economic life of China. To choose RNA deviated from the CCP's original proposals for the ethnic policy from 1922 and onwards which emphasised national self-determination, federalism and recognising nationalities' rights to secede from China to establish their own independent countries. The Common Program of the Chinese People's Political Consultative Conference adopted on 29 September 1949, which served as the provisional Constitution establishing the PRC, laid down the principle that RNA shall be practiced in areas where minorities live in compact communities.<sup>200</sup> The 1954 Constitution specified that the RNA areas were inseparable parts of the PRC,<sup>201</sup> a principle which has been followed in subsequent constitutions of the PRC.

Although the Chinese State polity is different from that of USSR, the CCP is a Leninist party. The practice of RNA can never be properly understood if one neglects the Party-state power structure and institutional environment. "Democratic centralism" is an overriding organisational principle articulated in the Constitution and even by the RNAL. Regionalism should be constrained under the centralisation of the central Party-state's authority. Minority nationalism may sometimes be encouraged but only because it is instrumental to combat tendencies of local or regional separatism.

The process of nation-building also affects the practice of RNA. Maintaining the distinctive group identity of minority nationalities is treated as a threat to the unity of the nation, historically, especially during periods when Han chauvinism was out of control and assimilation or discrimination policies towards minority nationalities were apparent. The practice of RNA was interrupted for more than three decades shortly after it was established in the 1950s. While the 1975 and 1978 Constitutions retained the principle of RNA, the more specific rules were deleted. Although the RNAL was adopted in 1984 and it starts with the sentence "[t]he People's Republic of China is a unitary *multi-national State* created jointly by the people of all its nationalities" (emphasis added),<sup>202</sup> the ongoing practice is to promote a 'nation-State' model by building the *Zhonghua Minzu* as the collective unit comprising the Chinese nation. Thus, in essence minority nationalism should not be strengthened by the practice of RNA.<sup>203</sup> RNA, both as joint-groups

<sup>200</sup> <[www.fordham.edu/halsall/mod/1949-ccp-program.html](http://www.fordham.edu/halsall/mod/1949-ccp-program.html)>.

<sup>201</sup> Mao Zedong, 'On the New Stage', in *Minzu Wenti Wenxian Huibian* [A Collection of Documents Concerning the Nationality Problem] (CCP Party School Publishing House, Beijing, 1991) p. 595.

<sup>202</sup> Preface of the RNAL.

<sup>203</sup> Preface of the RNAL: "In the effort to maintain the unity of the nationalities, both big-nation chauvinism, mainly Han chauvinism, and local national chauvinism must be opposed."

autonomy and territorially separated autonomy for one group, can serve the strategies to lessen minority nationalities' group sense and identity for integrating them into the *Zhonghua Minzu*.

Therefore, the present practice of RNA is characterised by the innate tensions between the autonomous organs acting as local State organs "placing the interests of the State as whole above anything else", and as organs of self-government of the nationality(-ies) exercising autonomy guaranteeing the freedom to use and develop their own languages and culture comprising essential parts of their "internal affairs".<sup>204</sup> In reality, the Chinese RNA turns to emphasise the symbolic representation and participation rules instead of real 'autonomy' rules and mechanism. Thus, it has been implemented that the leader of the local autonomous government shall belong to the nationality exercising regional autonomy.<sup>205</sup> Other rules in relation to the principle of "ethnicalisation" (*minzu hua*) of the autonomous organs are also highlighted. In addition, the responsibilities of State organs at higher levels are articulated in more than one-fourth of the articles (19) of the RNAL, which leads to the understanding of the contents of Chinese RNA mainly as a set of preferential measures instead of a defence mechanism for the distinctive minority nationalities to be the masters of their own internal affairs.

The transition of the Chinese society in the last three decades shows some positive signs in the development of rule of law and respecting human rights. China has adopted ideas of the rule of law and the notion of China as a "socialist rule of law State", purportedly corresponding to the concept of the rule of law while at the same time maintaining the leadership of the CCP.<sup>206</sup> Furthermore, China has also undertaken to respect and ensure human rights in accordance with the Constitution and international human rights treaties. Article 33 of the 1982 Constitution was amended in 2004, and it now states that "[t]he State respects and preserves human rights".<sup>207</sup> The 1982 Constitution reinstated the importance of RNA by providing more detailed rules, and the basic content of RNA was further specified in the RNAL adopted in 1984, and amended in 2001. In 2005,

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<sup>204</sup>) Articles 3, 7, 10 and Preface of the RNAL.

<sup>205</sup>) Articles 17, 18 and 22, para. 2 of the RNAL.

<sup>206</sup>) Article 5 of the 1982 Constitution as amended in 1999 provides that the PRC practices "ruling the country in accordance with the law and building a socialist country of law". Law-making shall adhere to the basic principles of the Constitution and the leadership of the CCP, *see* Article 3 of the Legislation Law of the PRC (2000). On the notion of the rule of law in China, *see* Peerenboom, *supra* note 7.

<sup>207</sup>) Article 33 of the Constitution as amended in 2004. Article 52 of the RNAL provides that the organs of self-government shall guarantee the rights of citizens prescribed in the Constitution. China has ratified several conventions which are of importance to this field, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR). China signed the International Covenant on Civil and Political Rights (ICCPR) in 1998.

the State Council adopted Some Decisions on Implementing Law of People's Republic of China on Regional National Autonomy.<sup>208</sup> The long-time neglected supervision of the implementation of RNAL was initiated recently. In 2006, the Standing Committee of the NPC carried out its first supervision of the implementation of the RNAL, 22 years after its adoption.<sup>209</sup> However, despite these efforts the essential problems of institutional design remain to be solved.

The Chinese understanding of RNA as a 'unique combination' of two aspects, being neither a regional autonomy, *di fan zizhi*, nor "an ethnic autonomy", *minzu zizhi*, creates innate tensions in the institutional design.<sup>210</sup> It shall satisfy two sets of interests according to the Chinese Constitution and laws, that of the Chinese government and the CCP which is to "solve the national question", and that of the minority nationalities which is to guarantee their rights "to administer their own affairs". The group rights orientation of RNA still lacks the specific mechanism to fulfil the aims of the existing institutional arrangement. There are huge gaps between the stated aims and the practice of the autonomous authorities: the local government and local people's congresses neglect to exercise their law-making and decision-making powers in accordance with local circumstances and cultural characteristics of the minorities concerned.<sup>211</sup> National minority issues are in practice commonly treated as political affairs instead of legal affairs. The CCP's central department – the Ministry of the United Front – remains the principal decision-making body and maintains its dominance in formulating ethnic policies. The Chinese RNA's characteristics as the "basic policy" of CCP and "basic political system" of the State need to be transferred in the real sense of the rule of law and the respect of human rights into the "basic law" of China for the protection and promotion of minority rights.

#### 4. Searching for "Meaningful Autonomy" for Minority Nationalities

The Chinese RNA has experienced sharp turns along the tormented road of "practice" during the past six decades. From the experience gained and the contemporary challenges that this basic political system face there are incentives to search for new and improved ways to guarantee the rights and interests of China's minority nationalities.

<sup>208</sup>) In the revision of 2001 a supplementary article, Article 73, was inserted into the RNAL calling upon central and province or autonomous regional authorities to adopt appropriate regulations for implementing the law.

<sup>209</sup>) S. Aimaiti, 'Report on the Implementation of RNAL by the Inspection Group of the Standing Committee of NPC', in *Newsletter of Ethnic Legal System* (Ethnic Committee of NPC, Beijing, 2007) pp. 4–14.

<sup>210</sup>) Zhou Enlai, *supra* note 5, pp. 4–14.

<sup>211</sup>) Articles 19 and 20 of the RNAL.

The 50 years anniversary of the Guangxi Zhuang and the Ningxia Hui autonomous regions was celebrated in 2008. The establishment of these two important RNA areas followed upon the historical movements of the “great leap” and the “democratic reform” in 1958. One year thereafter there was social turmoil in the minority areas of southwest China, and the Dalai Lama with his followers left their homeland not to return for half a century. The “democratic reform” of the Tibetan society resulted in the establishment of the Tibetan Autonomous Region in 1965, one year before the Cultural Revolution was initiated. Efforts to “bring order out of chaos” resulting from the ten years disaster of the Cultural Revolution started at the end of the 1970s. One significant event was the drafting of the new Constitution and the RNAL, which were drafted at the same time in the early 1980s. The adoption of the RNAL in 1984 was a landmark for minority rights protection by setting into legal rights what had been thrown into disorder during the Cultural Revolution.

The autonomous “legislative bomb” started since then and has resulted in more than 600 laws and regulations adopted by the autonomous authorities on the exercise of RNA, *i.e.* 135 autonomous regulations, 474 special regulations and about 70 alteration or supplementary decisions were adopted by the end of 2008. The central authorities have also taken measures to strengthen the normative setting, especially since 2000. Two important measures adopted in 2001, were the revision of the RNAL by the Standing Committee of NPC, and the State Council’s legal document with the title of Some Decisions on the Implementation of RNAL, issued in 2005.<sup>212</sup> This document specified the fields for measures for strengthening the implementation and called for more detailed policies by various departments of the State Council and local governments. As a result, about seven ministries or departments under the State Council adopted or drafted relevant policies and about 12 provinces adopted regulations on the implementation of RNAL.

RNA is a political system adopted 60 years ago in response to the challenges that China faced in ethnic policy. Observing the above legislative measures taken by various levels of authorities since the 1980s, the State seemingly put on “new shoes” for applying the RNA, which may referred to as the “old pathway”. In view of the contemporary challenges to the RNA, the question is whether these measures can lead to a genuine or meaningful autonomy for minorities. Are these measures and legislation helpful in protecting minorities’ interests and rights or can this be described as a phenomena of “wearing new shoes but walking along the old pathway”?

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<sup>212</sup>) The Central Committee of CCP issued a parallel but internal document on the economic development and implementation of RNAL which is only accessible by high-ranking officials. It is assumed that this CCP document actually strengthens the State Council’s decision and pushes the local provincial authorities to adopt their local decisions afterwards.

In 2006, the Standing Committee of NPC organised an inspection on the implementation of RNAL with focus on the responsibilities of State organs at higher levels according to Chapter VII of RNAL and related legislative work. It was the first time, after 22 years of implementation, that the Standing Committee of the NPC exercised their supervision power in relation to the RNAL. The significance given to this inspection is reflected in the fact that an official report of the inspection was presented, and it disclosed the following six main problems:<sup>213</sup>

1. Decision-making by the State organs at higher levels neglecting the reality of RNA areas

Article 54 of RNAL reads: “[T]he resolutions, decisions, orders and instructions concerning national autonomous areas adopted by the State organs at higher levels should suit the conditions in these areas.” However, in practice, this rule is not implemented. The State organs at higher levels have the tendency of imposing uniformity in all cases neglecting the realities of RNA areas while making policies or decisions applicable also to such areas. The normal practice of “cutting it all evenly with one stroke” in policy-making and implementation is resulting in enormous problems in the fields of education, employment and healthcare in the RNA areas.

2. Malfunctions of stipulated preferential treatment

To gain preferential treatments and develop local economy are a main concern of the RNA areas. There are several forms of preferential treatments articulated in RNAL. However, the finding of this inspection shows that these preferential treatments are not functional. For example, it is articulated that “where counterpart funding is required of national autonomous areas for infrastructure projects arranged by the State, the State may give them preferential treatment by reducing or exempting the counterpart funding, as the case may be”.<sup>214</sup> Except for highway building projects, the RNA areas are required to provide “counterpart funding” for most of the infrastructure projects resulting in that most of the RNA areas cannot get the investment because of their extreme financial difficulties. Thus, the “preferential treatment” articulated in the RNAL cannot be implemented in practice.

3. Irregularity and failure of the financial transfer payment mechanism

RNAL requires that “as the national economy grows and financial revenues increase, governments at higher levels shall gradually increase the financial transfer payment with regard to national autonomous areas”.<sup>215</sup> The

<sup>213</sup>) Aimaiti, *supra* note 209, pp. 4–14.

<sup>214</sup>) Article 56, para. 2 of the RNAL.

<sup>215</sup>) Article 62 of the RNAL.

inspection finds that in reality the existing financial transfer payment mechanism cannot fulfil the real needs of RNA areas. The distribution of the funds through this mechanism is filled with irregularities and the process lacks transparency.

4. No implementation of due benefit compensation for the exploitation of natural resources

RNA areas in China are rich in natural resources and many projects of exploiting oil, gas, coal, wood, hydro-power have been carried out in these areas. Article 65 of RNAL reads: “[W]hile exploiting resources and undertaking construction in national autonomous areas, the State shall give consideration to the interests of these areas, make arrangements favourable to the economic development there and pay proper attention to the productive pursuits and the life of the minority nationalities there. The State shall take measures to give due benefit compensation to the national autonomous areas from which the natural resources are transported out.” In practice, the inspection finds that local people have to endure all the negative results, such as loss of farming land, environmental pollution, natural disasters and resettlement, without any kind of compensation, including the due benefit compensation.

5. No implementation of due benefit compensation for carrying out environmental protection

Article 66 of RNAL requires that “where national autonomous areas make contribution to the ecological balance and environmental protection of the State, the State shall give them due benefit compensation”. This rule is not implemented well when State projects for environmental protection are carried out in the RNA areas, which urgently aggravates the poverty of local minority nationalities.

6. Lack of operational legal instruments for the implementation of the RNAL

Article 73 of RNAL reads: “The State Council and the relevant departments under it shall, within the limits of their functions and powers, respectively formulate administrative rules and regulations, specific measures and methods for the implementation of this Law. The people’s congresses and their standing committees of autonomous regions and of provinces and municipalities directly under the Central Government with autonomous prefectures or autonomous counties under them shall, in the light of the actual local circumstances, formulate specific methods for the implementation of this Law.” The inspection found that in the central government, most of the departments under the State Council have not adopted any administrative rules and regulations, specific measures and methods for the implementation of this law. In the local RNA areas, the lack of autonomous regulations in the five RNA areas at the provincial

level is the crucial fact which directly prevents the effective implementation of RNAL.

To sum up, the “new shoes” worn by the State include strengthening the legal basis of RNA over the last 25 years by the adoption and implementation of new legislation. However, after 30 years of policies of economic reform and opening up of China, the ideas and institutions for dealing with ethnic affairs remain as political issues and within policy-making for building the “united front”, instead of within the protection of minority rights and respect of diversity.

The CCP plays a dominant role in the RNA legislation and implementation processes. The draft regulations on the exercise of autonomy of the five autonomous regions at the provincial level have never been presented through the formal legal procedure articulated by the RNAL. The special regulations in the regional level encountered the same fate. Although there are more than 400 special regulations, none of them are regional ‘special regulations’, even in a field such as minority language use which is a typical example of the ‘special’ situations in the RNA areas and should therefore be regulated by ‘special’ regulations. Without these two kinds of autonomous legislation at the regional (provincial) level, there is no clear division of powers between the central and the local autonomous authorities, which means in the Chinese context that the powers remain in the hands of the central authorities. It makes the self-governing organs of the RNA areas effectively defunct and unable to exercise any kind of meaningful autonomy.

These noteworthy institutional shortcomings illustrate the lack of defining “autonomy” even in the formal law. In addition, the revision of RNAL failed to provide any judicial remedies essential to address disputes relating to the law. Therefore the ‘old pathway’ of RNA still fails in its “defence function” for the minority nationalities to be masters of their own affairs, and the RNAL as the legal guarantee of the RNA system remains a “law without teeth”. The Chinese development strategies, with their focus on economic growth in the minority areas and neglecting minority concerns, have caused an increased social deficit with regard to the maintenance of minorities’ identity through their languages, religions and way of life. Furthermore, lacking agency for representation of national minority groups to exercise their group rights, there is no bridge for minority nationalities to cross the river and achieve the articulated purpose of RNA.

Suggestions for reaching “meaningful autonomy” focusing on just strengthening the implementation of the existing laws of RNA are insufficient in the complicated institutional environment of RNA.

Instead of “wearing new shoes but walking along the old pathway”, “to fill new liquor in the old bottle” could be a more strategic way toward finding a meaningful autonomy. The positive label on the “old bottle” of RNA is that “minorities should be the master of their own internal affairs”. Therefore, institutional



innovations could be introduced, as the “new liquor”, which could include measures such as redefining the autonomous territories, clarifying the autonomous power, re-identifying minority groups as the subject of exercising autonomy, and establishing legitimate representative organs for minority groups.

Various measures within this line of thought may be presented for discussion to break the ice of existing Sino-Tibetan dialogue. While being critical to the fragmentation of the Tibetan communities, set under the administration of different provinces of the PRC, Dharamshala proposed to integrate the existing Tibetan communities into one single territorially-based administrative entity. This “Greater Tibet” proposal was rejected by Beijing as another version of Tibetan independence. In view of the two basic elements of RNA, *i.e.*, the “territory” and the “ethnic group”, besides the way of territorial integration, another proposal could be a substantial meaningful autonomy of the whole Tibetan people by establishing a nation-wide Tibetan Parliament for integrating their ethnic identity, which also would strengthen the group element.

The Nordic practice of non-territorial but functional autonomy for Saami people could be an institutionally inspiring mechanism to supplement the Chinese territorially-based RNA. The Norwegian, Swedish and Finnish Saami parliaments have been playing essential roles in formulating the ‘group will’ of the Saami in the respective countries. The diversified interests and needs among Tibetans could be integrated in such an arena. The main function of such non-territorially based group representative body would primarily be to formulate the Tibetan people’s group will with respect to their “internal affairs”. The State should respect the decisions made by such Tibetan Parliament. It should have the right to participate in relevant decision-making processes which in their view may affect the Tibetans’ internal affairs. Secondly, it should be “consulted” in a due process about those so-called ‘development’ activities within Tibetan traditional territories, such as the exploration of natural resources. This alternative avoids the deadlock around the key issues in the territorially-based proposal. However, the difficulties of a reasonable division of the constituencies and democratic election among the whole Tibetan people to establish a national wide Tibetan Parliament cannot be underestimated.

The “meaningful autonomy” of Tibet could also be discussed in a wider institutional arrangement of redesigning the polity of China from a unitary system to a federation. Federalism as an idea of the Chinese polity was initiated by both the founding father of the Republic of China, Sun Yat-sen, and the People’s Republic of China, Mao Zedong. It was adopted and coupled with the recognition of the right to self-determination of Tibetans, Mongolians or other minorities in the CCP’s resolutions and declarations from the 1920s to the later 1940s. In view of the size and diversities in territory and population, a federation or confederation framework with symmetrical or asymmetrical ways of devolving the central authorities’ power sounds more suitable in response to the challenges of regional

or cultural diversities. In fact, there are even approvals of a federation as a possible solution for the lasting tensions between both sides of the Taiwan Strait. According to Deng Xiaoping's pragmatic approach to the idea of a federation, it does not matter whether it is a "white or black cat", as long as it can catch those "rats". If the politically problematic areas such as Tibet, Xinjiang (East Turkistan), Inner Mongolia (South Mongolia), or Hong Kong and even Taiwan could be parts of the "Chinese Federation", and at the same time the various peoples in different regions could enjoy their very diverse ideologies, political institutions or cultural identity, then why not? Beautiful "symphonic music" is played by various different musical instruments of the orchestra. To reach harmony by respecting differences is a familiar teaching by Confucius.

In considering the above three options, the first represents the continuation of a top-down approach to Chinese State-building. National minorities have been told to be "the master of their own affairs" for more than half a century, at least more than 25 years on the basis of the RNAL. However, the 'autonomous' demands from minorities along this road have been neglected. The peoples' enthusiasm for and trust in the RNA have been slowly washed away by the tide of time.

On the other hand, the profound change that a federation reform of the Constitution entails needs political willingness, and concerted as well as dynamic interactions among various political actors or stakeholders. In addition, this reform would have to meet fundamental institutional difficulties in, for example, dividing the territorial units under the federation or balancing the regional, demographical, historical, economic and ethnic elements in constructing this polity. The lack of historical experience, practice and institutional resources for this framework leave this option with too much uncertainty about its potential success.

The realistic steps towards "meaningful autonomy" lie in the second option. There should be no limits for institutional innovations to explore the "new liquor" for satisfying the interests of the contending parties and combining the top-down and bottom-up approaches. On the basis of respecting human rights and the sovereignty of the people including their ethnic, religious and linguistic diversity, various alternatives for institutional design should be encouraged for initiating discussions along the "middle way" of reaching the meaningful autonomy of minority nationalities while maintaining the unity of PRC.

The linguistic and ethnic or cultural complexity, and the rapidly evolving economies and a globalised world, call for new approaches to law and policy in the field of minority rights. In an attempt to create a broad basis for discussions on content, institutions and mechanisms for the protection of the rights of linguistic minorities, scholars and experts from China and elsewhere have drafted a set of recommendations, The Beijing-Oslo Recommendations on the Protection of the

Rights of Linguistic Minorities.<sup>216</sup> These recommendations draw upon the lessons learnt from developments in law and policy at international and regional levels, as well as domestic levels, including China, and in particular on research on the Chinese RNA in minority areas.

The Beijing-Oslo Recommendations are the result of joint deliberations among experts organised by the Research Centre for Ethnic Issues under the State Commission of Ethnic Affairs of the PRC and the Norwegian Centre for Human Rights at the Law Faculty of the University of Oslo. These Recommendations, developed by experts participating in their personal capacity, contain a set of options for law and policy which are based on international human rights standards and comparative research on law and practice on linguistic minorities in China, Norway and other selected countries. The Beijing-Oslo Recommendations should be seen as a living document progressing through the interests and sustained efforts by all persons devoted to the promotion of linguistic diversity and human rights.

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<sup>216</sup> A Chinese version of the Beijing-Oslo Recommendations on the Protection of the Rights of Linguistic Minorities was published in Hongjie Li and M. Lundberg (eds.), *Language Use and Culture Development: International Comparison of Policy and Law* (Central University of Nationalities Press, Beijing, 2008). An English version of the Beijing-Oslo Recommendations may be obtained from the China Autonomy Program at the Norwegian Centre for Human Rights, University of Oslo, e-mail: yongzh@nchr.uio.no; maria.lundberg@nchr.uio.no.